S. HRG. 99-81

SURFACE FREIGHT FORWARDER DEREGULATION ACT OF 1985

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1124

TO AMEND TITLE 49, UNITED STATES CODE, TO REDUCE REGULATION OF SURFACE FREIGHT FORWARDERS, AND FOR OTHER PURPOSES

MAY 17, 1985

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Committee on Commerce, Science, and Transportation

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SURFACE FREIGHT FORWARDER DEREGULATION ACT OF 1985

FRIDAY, MAY 17, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR 253, Russell Senate Office Building, Hon. Bob Packwood (Chairman of the subcommittee), presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member, Steve Palmer, minority professional staff member, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. The committee will come to order, please. This is a hearing on the subject of freight forwarders and the possibility of extending deregulation in that area. I hope subsequently in a year, not only to be able to pass a bill deregulating to a great extent freight forwarding in most of its areas, but hope we take up again the issue of truck deregulation and continue on in that vein.

At the moment, however, we are not here for that purpose; we are here just for the purpose of freight forwarders, and our first witness today is the Chairman of the Interstate Commerce Commission, Reese Taylor.

This morning the Surface Transportation Subcommittee will explore the need for deregulation of the surface freight forwarding industry. Earlier this week, I introduced legislation to eliminate the Interstate Commerce Commission's [ICC] economic regulation of freight forwarders. This legislation, the "Surface Freight Forwarder Deregulation Act of 1985," is intended to strengthen the freight forwarding industry and to lead to more effective competition between freight forwarders and other transportation intermediaries, as well as the trucking and railroad industries.

It is clear that freight forwarders play an important role in our Nation's transportation system. Freight forwarder operations, however, are hampered by unnecessary ICC regulations, especially in such areas as entry and ratemaking. This problem is compounded by the fact that freight forwarders' competition—motor carriers and railroads, as well as other transportation intermediaries such as shipper associations, shipper agents, and brokers—operate with far fewer, and in some cases, no Federal regulatory restrictions.

I have long believed that our transportation industries should be removed from Government regulation to the maximum extent possible. The Motor Carrier Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982 were all steps in the right direction. The time has come to expand regulatory reform to include freight forwarders and to allow forwarders to compete more effectively and efficiently.

I look forward to hearing from our witnesses today about the need for freight forwarder deregulation, as well as exploring any areas where witnesses believe any continued limited Federal regulation might be necessary.

I have an opening statement from Senator Hollings and the bill, S. 1124, which I introduced that I will place in the record.

[The material referred to follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

With today's hearing, we begin consideration of an issue this Committee has become very accustomed to, that being deregualtion, with yet one more industry. The surface freight forwarder industry is being considered for total deregulation, and the legislative vehicle for that process is S. 1124, which the Chairman of this Subcommittee recently introduced.

Deregulation has not been something I feel quite comfortable with, at least not without strong assurances of continued service and competition. My concern is for the well-being of the consumer, who many times suffers through deteriorating service and often, higher prices under deregulation.

Freight forwarders argue that deregulation will help them. But, who will be hurt? What effect would deregulation have on the small package shipper in Aiken, South Carolina? What are the types of problems people will encounter under deregulation and how can we ensure adequate protections in this legislation?

These are the types of questions this Subcommittee must resolve before we can pursue the legislation. In this light, I look forward to input of all the witnesses, both at today's hearings and in subsequent follow-up statements and questions.

99TH CONGRESS
1ST SESSION

S. 1124

To amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14 (legislative day, APRIL 15), 1985

Mr. PACKWOOD introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Freight Forwarder Deregulation Act of 1985".

PURPOSE

SEC. 2. This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary Government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

FINDINGS

SEC. 3. The Congress finds that—

(1) a safe, sound and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation industries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated by Act of Congress; and

(5) legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

DEFINITIONS

SEC. 4. Section 10102 of title 49, United States Code, is amended—

(1) in paragraph (2), by inserting ", and a freight forwarder" immediately before the period;

(2) in paragraph (6), by inserting ", and a freight forwarder" immediately before the period; and

(3) in paragraph (9)—

(A) by inserting "and" at the end of subparagraph (A);

(B) in subparagraph (B), by striking "; and" and inserting in lieu thereof a period; and

(C) by striking subparagraph (C).

INTERSTATE COMMERCE COMMISSION ADMINISTRATION

SEC. 5. (a) Section 10328(b)(2) of title 49, United States Code, is amended by striking "or freight forwarders".

(b) Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking ", or a freight forwarder";

(B) by inserting "or" immediately after "broker"; and

(C) by striking "II, III, or IV" and inserting in lieu thereof "II or III";

(2) in subsection (c)(3), by striking "or freight forwarder" wherever it appears; and

(3) in subsection (d), by striking "(1)", and by striking "or (2) a freight forwarder,".

JURISDICTION

SEC. 6. (a) Section 10521(a) of title 49, United States Code, is amended by inserting ", except by a freight forward-

er," immediately after "transportation" the second time it appears.

(b) Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(i), by inserting "or" immediately after the semicolon;

(2) in subsection (a)(1)(B)(ii), by striking "or" and inserting in lieu thereof "and";

(3) by striking subsection (a)(1)(B)(iii);

(4) in subsection (a)(1)(C), by striking "or service provided by the freight forwarder";

(5) in subsection (a)(2), by inserting "and" immediately after "rail carrier,", and by striking ", and under subchapter IV of this chapter when provided by such a freight forwarder";

(6) in subsection (b)(1)(B)(ii), by inserting "or" immediately after the semicolon;

(7) in subsection (b)(1)(B)(iii), by striking "; or" and inserting in lieu thereof a period;

(8) by striking subsection (b)(1)(B)(iv); and

(9) in subsection (b)(2)—

(A) by striking "or service provided by the freight forwarder for whom the transportation was provided";

(B) by inserting "and" immediately after "for such a motor carrier;"; and

(C) by striking ", and under subchapter IV of this chapter when provided for such a freight forwarder".

(c)(1) Section 10561 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10561. General jurisdiction."

and inserting in lieu thereof

"10561. Repealed.".

(d)(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking

"10562. Exempt freight forwarder service."

and inserting in lieu thereof

"10562. Repealed.".

RATES, TARIFFS, AND VALUATIONS

SEC. 7. (a) Section 10701(d) of title 49, United States Code, is amended by striking "II, III, or IV" and inserting in lieu thereof "II or III".

(b) Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(A), by inserting "or" immediately after the semicolon;

(2) in subsection (b)(1)(B), by striking "or";

(3) by striking subsection (b)(1)(C);

(4) in subsection (b)(3), by striking "or a freight forwarder"; and

(5) in subsection (b)(4), by striking "or a freight forwarder" and "or the inherent nature of freight forwarding, respectively".

(c) Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking "(c)(1)(B)–(E)" and inserting in lieu thereof "(d)(1)(B)–(D)"; and

(2) by striking subsection (d)(1)(E).

(d) Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1), by striking "or freight forwarder"; and

(2) in subsection (d)(2), by striking "or freight forwarders" wherever it appears.

(e) Section 10722(d)(2) of title 49, United States Code, is amended by striking the second sentence.

(f)(1) Section 10725 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by striking

"10725. Special freight forwarder rates."

and inserting in lieu thereof

"10725. Repealed.".

(g) Section 10730(a) of title 49, United States Code, is amended—

(1) by striking "I, II, or IV" and inserting in lieu thereof "I or II"; and

(2) by striking the last sentence.

(h) Section 10741 of title 49, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively.

(i) Section 10743(b)(2) of title 49, United States Code, is amended by striking "(including a motor common carrier being used by a freight forwarder)".

(j)(1)(A) The heading of section 10749 of title 49, United States Code, is amended by striking "and limitation on use of common carriers of freight forwarders".

(B) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is amended by striking "and limitation on use of common carriers by freight forwarders".

(2) Section 10749 of title 49, United States Code, is amended—

(A) by striking "(a)"; and

(B) by striking subsection (b).

(k) Section 10762 of title 49, United States Code, is amended—

(1) in subsection (a)(2)—

(A) by striking "II, III, or IV" wherever it appears and inserting in lieu thereof "II or III" in each such place; and

(B) by striking "or by a freight forwarder";

(2) in subsection (b)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(3) in subsection (b)(1)(C), by striking "or IV".

(l) Section 10766 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) in subsection (b)—

(A) by striking "(b)";

(B) by striking "providing service subject to the jurisdiction of the Commission under that subchapter";

(C) by striking the second sentence; and

(D) by striking the last two sentences; and

(3) by striking subsection (c).

LICENSING

SEC. 8. (a)(1)(A) The heading of section 10923 of title 49, United States Code, is amended by striking "and freight forwarders".

(B) The item relating to section 10923 in the section analysis of chapter 109 of title 49, United States Code, is amended by striking "and freight forwarders".

(b) Section 10923 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "or to provide service subject to that jurisdiction under subchapter IV of chapter 105 as a freight forwarder,"; and

(B) in paragraph (2), by striking "or service";

(2) in subsection (b)(1), by striking "or to provide service as a freight forwarder";

(3) by striking subsection (b)(7);

(4) in subsection (c)—

(A) in paragraph (1), by inserting "and" immediately after the semicolon;

(B) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and

(C) by striking paragraph (3);

(5) in subsection (d)(1), by striking "or freight forwarder"; and

(6) in subsection (d)(3)(B), by striking "or freight forwarder".

(b) Section 10925 of title 49, United States Code, is amended—

(1) in subsection (b)(1), by striking "broker, or freight forwarder," and inserting in lieu thereof "or broker,";

(2) in subsection (c)(1), by striking "or freight forwarder";

(3) in subsection (d)(1), by striking ", a permit of a freight forwarder,";

(4) in subsection (d)(1)(A)—

(A) by striking "; and" and inserting in lieu thereof a period; and

(B) by striking "(A)"; and

(5) by striking subsection (d)(1)(B).

(c) Section 10926 of title 49, United States Code, is amended—

(1) in paragraph (1), by inserting "and" immediately after the semicolon;

(2) in paragraph (2), by striking "; and" and inserting in lieu thereof a period; and

(3) by striking paragraph (3).

(d) Section 10927(c) of title 49, United States Code, is amended—

(1) by striking paragraph (1); and

(2) in paragraph (2)—

(A) by striking "(2)"; and

(B) by striking "providing service under a permit" and "under this subtitle".

(e) Section 10930 of title 49, United States Code, is amended—

(1) by striking "(a)"; and

(2) by striking subsection (b).

(f)(1) Section 10933 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 109 of title 49, United States Code, is amended by striking

"10933. Authorizing abandonment of freight forwarder service."

and inserting in lieu thereof

"10933. Repealed.".

OPERATIONS OF CARRIERS

SEC. 9. (a) Section 11101(b) of title 49, United States Code, is amended—

(1) by striking "and freight forwarders";

(2) by striking "subchapters II and IV" and inserting in lieu thereof "subchapter II"; and

(3) by striking "and for" and inserting in lieu thereof "including".

(b)(1) Section 11127 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 111 of title 49, United States Code, is amended by striking

"11127. Service of freight forwarders."

and inserting in lieu thereof

"11127. Repealed.".

(c) Section 11141(1) of title 49, United States Code, is amended by striking "(except a freight forwarder)".

(d) Section 11142 of title 49, United States Code, is amended by striking "II, III, and IV" and inserting in lieu thereof "subchapters II and III".

FINANCE

SEC. 10. (a) Section 11323 of title 49, United States Code, is repealed.

(b) The section analysis of chapter 113 of title 49, United States Code, is amended by striking

"11323. Limitation on ownership of other carriers by freight forwarders."

and inserting in lieu thereof

"11323. Repealed.".

FEDERAL-STATE RELATIONS

SEC. 11. (a) Section 11501 of title 49, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsection (b) through (f) as subsections (a) through (e), respectively; and

(3) by adding at the end thereof the following new subsection:

"(f) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.".

(b) Section 11502 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking "I, III, or IV" and inserting in lieu thereof "I or III"; and

(2) in subsection (b), by striking "or IV".

(c) Section 11505 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(a)"; and

(2) by striking subsection (b).

ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

SEC. 12. (a) Section 11702(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "or 10933";

(2) in paragraph (5), by striking "; and " and inserting in lieu thereof a period; and

(3) by striking paragraph (6).

(b)(1) Section 11704 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 117 of title 49, United States Code, is amended by striking

"11704. Action by a private person to enjoin abandonment of service."

and inserting in lieu thereof

"11704. Repealed.".

(c) Section 11705(b)(3) of title 49, United States Code, is amended by striking "or IV".

(d) Section 11707(a) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "I, II, or IV" wherever it appears and inserting in lieu thereof "I or II" in each such place; and

(2) in paragraph (2), by striking "subject to this subtitle".

(e)(1)(A) The heading of section 11708 of title 49, United States Code, is amended by striking "and freight forwarder".

(B) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by striking "and freight forwarder".

(2) Section 11708(a) of title 49, United States Code, is amended by striking "or service of a freight forwarder".

CIVIL AND CRIMINAL PENALTIES

SEC. 13. (a) Section 11904 of title 49, United States Code, is amended by striking subsection (d).

(b)(1) Section 11908 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by striking

"11908. Abandonment of service by freight forwarder."

and inserting in lieu thereof

"11908. Repealed.".

(c) Section 11909 of title 49, United States Code, is amended by striking subsection (d).

(d) Section 11910(a) of title 49, United States Code, is amended by striking paragraph (4).

(e) Section 11914 of title 49, United States Code, is amended by striking subsection (d).

EFFECTIVE DATE

SEC. 14. This Act shall become effective 60 days after the date of enactment of this Act.

Senator PACKWOOD. I would say to all of the witnesses, again you were very good about getting your testimony in, and I had a chance to read it last night and this morning. It will be in the record in full and I would appreciate it if you would abbreviate your testimony.

Mr. Chairman.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; HOWIE SPORN, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS; AND MARK SHAFFER, SENIOR STAFF ATTORNEY

Mr. TAYLOR. Thank you, Mr. Chairman. It's a pleasure to be here, and before I begin, let me introduce the individuals at the table with me this morning. On my right is Warren McFarland, Director of the Office of Compliance and Consumer Assistance of the Commission; and on my left is Howie Sporn, Deputy Director of our Office of Proceedings; to his left is Mark Shaffer, Senior Staff Attorney in the Office of Proceedings.

Thank you for this opportunity to appear before the Subcommittee and submit the Commission's views on the issue of deregulation of surface freight forwarders. The recently introduced bill, S. 1124, is designed to remove Commission jurisdiction over activities of the surface freight forwarding industry. We believe the bill as drafted accomplishes this result and will ensure that surface freight forwarders can provide competitive and efficient transportation in the present and the future.

Existing statutory provisions are outdated and constitute cumbersome impediments to the promotion of efficient and competitive freight forwarder service. These protective provisions inhibit the ability of freight forwarders to meet the demands of the marketplace and are counterproductive to achieving the goals of the National Transportation Policy. They restrict the range of price and service options available to the shipping public, result in the inefficient use of equipment, and limit the growth of intermodal transportation.

Finally, the current provisions encourage the practice, which may be subject to challenge, of entities such as shipper associations or agents providing full-range freight forwarder service under the exemption provisions of 49 U.S.C. 10562.

Since passage of the Motor Carrier Act, the Commission has attempted to reduce the burdens faced by surface freight forwarders in competing with other modes. In 1981, we authorized independent affiliates of surface freight forwarders to provide exempt consolidated services under 49 U.S.C. 10562(4). That proceeding was Ex Parte No. 380, "Status of Carrier-Affiliated Shippers' Agents." In 1982, the Commission interpreted provisions of the Staggers Rail Act of 1980 to allow freight forwarders to enter into rail contracts. That proceeding was Ex Parte No. 387, "Railroad Transportation Contracts." Also, in 1982 we promulgated a revision of our rules to allow freight forwarders to take advantage of the restriction re-

moval procedures. That proceeding was Ex Parte No. MC-142 (Sub-No. 2), "Freight Forwarder Restrictions."

Since 1982 the Commission has continued to opt for increased competition in the marketplace in granting broad grants of general commodity authority to surface freight forwarders. Recently, the Commission allowed the Freight Fowarders Tariff Bureau to publish a rule that would provide for the averaging of rates without specifically publishing the actual applicable rates in the tariff. That proceeding was No. 39928, "Freight Forwarder Tariff Bureau, Inc.—Average Rates."

The above activities have increased freight forwarder participation in the transportation industry. However, existing entry-exit controls, rate regulation, limitations on permissible control relationships between freight forwarders and other carriers, and court intervention, among other factors, have prevented the Commission from adopting a regulatory approach that would enhance, to the maximum extent possible competition and efficiency within the surface forwarding industry.

Now, if I may, Mr. Chairman, I would like to depart from my prepared statement for a moment and interject that one of the reasons I am personally in strong support of your freight forwarder deregulatory bill is that it would eliminate the serious legal problem that I had with the Commission's decision in our recent Freight Forwarder Tariff Bureau case.

In that proceeding, a proposed tariff rule was filed by the Freight Forwarder Bureau that contained really nothing more than an offer to negotiate and agree with shippers on an average rate. Since the agreed-upon rate will neither be published in, nor readily ascertainable from, the filed tariff, I felt that the proposal clearly ran afoul of 49 U.S.C. 10762(a)(1) which requires that freight forwarders and others publish and file tariffs containing the rates and classifications, rule and practices, related to those rates.

For me, the language in the decision, which I felt reached to find the submittal lawful, was clearly in error under the existing statute. Actually, what the decision held was that, although a competitor could not determine from the tariff alone the precise charges that a particular shipper would pay, that fact does not necessarily mean that the tariff violates the statute.

Moreover, that case is now on appeal in the D. C. Circuit Court. In any event, regardless of who is right about what the present law requires, the bill that you are sponsoring eliminates the problem because it would do away with freight forwarder regulation, including regulation of freight forwarders' rates. In my opinion, this would be a most welcome development because, as I pointed out in my dissent, the average rate proposal was most certainly an innovative filing, designed to enhance pricing flexibility in response to the competitive forces of the marketplace. But unfortunately in my view, it ran smack into the legal barrier of the statute.

Your bill, by removing that barrier, would clear the way for such innovative pricing by freight forwarders, freedom which certainly today, in today's market-oriented environment, they ought to have.

Now, returning to my prepared statement, the proposed legislation should help achieve more competitive pricing and increase service options available to shippers by removing from title 49 of

the U.S. Code, existing regulatory controls over surface freight forwarders. S. 1124 would accomplish this primarily by removing the Commission's general jurisdiction over freight forwarders, by amending 49 U.S.C. 10521(a) and repealing 49 U.S.C. 10561.

The proposed legislation also makes other changes related to the removal of general jurisdiction to ensure, among other things, that:

(1) No controls are placed on freight forwarder rates;

(2) Freight forwarders are not immune to antitrust provisions;

(3) Freight forwarders are not limited in their operations to the use of certain types of carriers; and

(4) Freight forwarders are not precluded from owning other modes of transportation.

These proposed changes, as well as others contained in the bill, should enable surface freight forwarders to operate in an unfettered manner, responsive to the forces of the marketplace, and accountable to the shipping public through the State and Federal court systems. It will allow surface freight forwarders to adapt to present and future transportation needs and marketplace realities.

The Commission supports these goals and the proposed legislation.

I would be happy now, if you have some questions, to try and respond.

Senator PACKWOOD. I have, Reese, just two or three.

One, we are going to hear testimony later today from organizations representing the households goods freight forwarders, urging continued regulation of that industry.

Do you believe household goods freight forwarders need to remain regulated?

Mr. TAYLOR. Mr. Chairman, I really am not aware of any compelling reasons to treat freight forwarders of household goods any differently than we treat the general commodity freight forwarders.

I do not know exactly what you are going to hear later on. I have not seen the testimony. I know that some of the household goods carriers are concerned about the so-called consumer protection remnants of household goods regulation winding up over at the Federal Trade Commission. Since there are a number of freight forwarders in the household goods business who are also carriers, it may be that that is why they want to keep the ICC in the act. I do not know.

Senator PACKWOOD. Well, they are concerned that as long as household goods transportation is regulated, the freight forwarders ought to be regulated.

Mr. TAYLOR. Well, I must say that I do not really think there is a basis for making a distinction between the two. As you know, forwarders that provide service related to used household goods are already exempt from regulation under 49 U.S.C. 10562(2)(d), and also those forwarders who are regulated because they provide service related to nonexempt household goods do not really operate in a manner substantially different from forwarders of other commodities, particularly since a lot of that traffic is containerized.

So I really don't think that there is a basis for insisting upon different treatment.

Senator PACKWOOD. The second question: Some shippers believe that current cargo liability requirements must be retained in order to protect shippers in the event of freight forwarder deregulation.

Do you believe any specific liability provisions need be added to S. 1124 beyond the bonding requirements provided in Section 8?

Mr. TAYLOR. That is probably not the easiest question to answer. We may have to take a little bit of a further look at it.

I don't think it is altogether clear from the analysis that we have been able to make so far that S. 1124 actually eliminates the cargo liability requirement of 49 U.S.C 11707 because paragraph (a)(1) of that provision includes common carriers and receiving and delivering carriers within its scope. Your bill retains the definition of freight forwarders as common carriers under 49 U.S.C. 10102(4); 49 U.S.C. 11807(a)(2), which is the cargo liability requirement, continues to define freight forwarders as receiving and delivering carriers. Therefore, freight forwarders might actually remain under the cargo liability provisions, but I think the important part—and that's the reason I'm mentioning this—is depending upon what you actually intend and what you actually want. I think that question really ought to be specifically clarfiied.

Senator PACKWOOD. OK.

Mr. TAYLOR. Now, assuming, however, that the cargo liability requirement is to be eliminated for freight forwarders, then the liability provisions of State law, the Uniform Commercial Code, commercial practice, would, as I understand it, come into play. However, the intention of the so-called bonding or security provision which your bill contemplates in 49 U.S.C. 10927(c)(2) may not really—and I think I am obliged to point this out—may not really be a significant additional protection for shippers, since any meaningful enforcement of security requirement would be almost impossible with all the other regulatory controls over freight forwarders removed from the Commission's jurisdiction.

What I am saying is, there really would not be any effective way to determine who would be required to maintain that security and there would be no real way to enforce the requirement. We had a very similar situation after the Bus Regulatory Reform Act. Our passenger brokers were totally deregulated. The only thing that was left was this optional provision about the fact that they may be bonded. We had quite a discussion with ourselves about whether or not we really ought to do that, and we finally concluded, well, it's fine, it's there, we could do it; perhaps it is needed; but how are we ever going to enforce it if that is the only little piece that is left of the whole matrix?

And we came to the conclusion that we really could not enforce it, and, therefore, it would be a meaningless act to impose any kind of a bonding requirement, and we didn't do it.

Senator PACKWOOD. And civilization has continued.

Mr. TAYLOR. Right. Absolutely.

So what I am suggesting here is that there is probably no point in your retaining 49 U.S.C. 10927(c)(2). We had the same situation in the Bus Regulatory Reform Act, and I would let it go.

Now, then you get to the final question of the cargo liability provision. If that security provision in 10927(c)(2) is not retained—and I think probably it should not be—at least not if it is sitting there

all by itself—then I think some shippers may become justifiably concerned about the loss of the cargo liability requirement in 49 U.S.C. 11707 and that uniformity and approach and all that it provides. So I think you may want to consider whether or not you want to retain that. That is a provision that the Commission itself could not have any involvement in, and I really do not think there is anything inconsistent about the maintenance of that cargo liability requirement and total deregulation of freight forwarders. I do not know what you are going to hear later on this morning, but it would be our view, if you wanted to go in that direction, that you could and it would not be inconsistent with the deregulation that is going to be brought about by the bill.

Senator PACKWOOD. The third question—and again it is a little bit unfair, because it is testimony coming later that I have had a chance to read—but we are going to hear testimony later today supporting expansion of the deregulation provisions of this legislation to include: (1) deregulation of carriers dealing with freight forwarders; and (2) total deregulation of frozen food transportation.

What is your view on those?

Mr. TAYLOR. Well, let me do the carriers dealing with freight forwarders first. Philosophically, as far as I am concerned, any expansion of the bill to include any motor carriers, certain motor carriers, must be absolutely great, because I think as you well know, I strongly support economic deregulation of the trucking industry and this would be another step in that direction.

I think, however, the expansion of your bill to include any type of carrier that deals with freight forwarders would be unwise because there I think you would be including rail carriers, and I don't think you want to get into that. Although I should note that to the extent forwarders use rail carriers in TOFC/COFC service, of course, they are not regulated.

Now, from a practical point of view, such an expansion might well create some serious enforcement problems, because again it would be almost impossible to determine which carriers use freight forwarders, at least at any given point in time. So that might become a difficult proposition.

Then I guess the third consideration is the strategic question, and frankly I am going to leave that up to you, Mr. Chairman, to decide whether such an expansion is wise at this time in view of your plans which have been well announced, to address the whole matter of trucking deregulation some time later this year.

That is only a short time off. It might be better to wait and do the whole business at once.

Senator PACKWOOD. On the rest of it, I am obviously waiting for the evaluation in July on our 5 years' experience with the Act and frankly I am hoping the administration—I am separating that from the ICC, obviously—will be there wholeheartedly and willing to push.

Mr. TAYLOR. I hope they are. We are going to urge them.

Senator PACKWOOD. I have a tax reform bill coming up later this year that is going to take a fair portion of my time. I did got a kick out of one lobbyist who does not like anything in Treasury I, or what he thinks is going to be in Treasury II, and he says I hope you spend all of your time on truck deregulation.

Mr. TAYLOR. Well, I suppose maybe there are some truckers who might wish you would spend all your time on finance.

Senator PACKWOOD. Rather have me spend my time on tax reform, I think.

Mr. TAYLOR. Now, I did not address the frozen food issue. And there, I think the question is much simpler. While this, of course, is not related as such to the deregulation of freight forwarders, I would certainly have no objection whatsoever to deregulating motor carrier movements of frozen food products and would support you in that effort.

This certainly is consistent with trucking deregulation and is a step in that direction, and I guess you probably know that Congressman Moody of Wisconsin has already introduced H.R. 2234, I believe it is, on the House side to accomplish that very result.

To me, what that expansion would really do is implement what amounts to a congressional exemption for motor carrier movements of frozen food. I think the Commission could and would have probably undertaken such an exemption on its own if we had the same kind of exemption authority for trucking that we have for railroads.

So I would not have any problem with that. If that's not going to create a lot of waves and problems in terms of your overall strategy later on in the year, I think that is fine.

Senator PACKWOOD. Actually, it does not create any problems. The more I can get done before, so that the less there is to deregulate, the less the oppositon to the final deregulation.

Mr. TAYLOR. Sure. So I think that is a good step.

Senator PACKWOOD. That is all I have, Mr. Chairman. Thank you very much.

Fellas, thanks for coming with him. I appreciate it.

Mr. TAYLOR. Thank you, Mr. Chairman. It's a pleasure to be here.

Senator PACKWOOD. Next we will take Mr. Philip Haseltine, the Deputy Assistant Secretary for Policy and International Affairs of the Department of Transportation.

Go right ahead, Mr. Secretary.

STATEMENT OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ED RASTATTER CHIEF, REGULATORY REVIEW AND PLANNING DIVISION

Mr. HASELTINE. Good morning. Thank you, Mr. Chairman. I have with me to assist in answering questions Ed Rastatter, the chief of our office of——

Senator PACKWOOD. Pardon me. I can't hear. Speak right into that microphone. Pull it up close.

Mr. HASELTINE. I have with me to assist in answering questions this morning Ed Rastatter, the chief of our regulatory review and planning divison of the policy office at OST.

Mr. Chairman, it is a pleasure to be able to speak with you on this important issue of freight forwarder deregulation. Let me add that we are especially pleased that you remain actively involved in surface transportation deregulation yourself. We know that will

benefit from your continued leadership, despite your many other responsibilities with Treasury II and other finance items.

Senator PACKWOOD. I have to confess that while I find this subject interesting and actually enthralling, when I go home at night to talk to my kids and my wife about the various subjects we deal with, truck deregulation is not one that seems to strike a sympathetic tenor.

I had my 14-year-old daughter come down during the spring recess and work in the office, answering the phone and answering mail, and she actually got three or four calls on truck deregulation, one of which she could answer. She felt very, very intelligent that she was able to answer a question on truck deregulation on the phone.

I don't know what she told the caller, but I haven't heard any adverse response so far.

Mr. HASELTINE. Very good. Thank you, sir.

Although the Motor Carrier Act of 1980 has provided significant new operational freedoms and reduced regulatory burdens for common and contract motor carriers, most of these benefits have yet to be provided to the freight forwarders. We believe that the regulatory changes proposed by your bill are especially worthy of support, since freight forwarder deregulation is dictated by equity considerations as well as by the principles of economic efficiency.

Forwarders have no economic characteristics warranting regulation for efficiency reasons such as substantial fixed costs and scale economies. The only basis for the regulation in 1942 was to provide consistency with the regulation of other freight modes. Forwarders must now compete on inequitable terms with other types of rapidly expanding third parties, shippers' associations, shippers' agents, and property brokers, which are virtually unregulated.

Many forwarders are also disadvantaged by the asymmetry of section 11323 of the Interstate Commerce Act which prohibits their direct control of motor carriers, but does not prohibit motor carriers from acquiring direct control of freight forwarders.

Recent developments in the transportation industry have a number of implications for the freight forwarders, some of which are adverse, especially heavy competitive pressure for less-than-truckload traffic, the forwarder's mainstay, resulting in both traffic erosion and rate depression. Rail carloadings by forwarders have fallen by more than one-half since 1978, and we are told that many LTL truck rates are at or near (and in some cases even below) 1980 levels.

To the extent that forwarders' loss of traffic results from regulatory restrictions and their right to perform economically viable services, both equity and efficiency considerations dictate that the roadblocks imposed by regulation should be promptly eliminated.

The U.S. Department of Transportation strongly supports your bill to deregulate freight forwarders for a number of basic reasons. First, it is consistent with and advances the goal of relying on market forces whenever feasible to promote competition and efficiency.

Second, it advances equity and efficiency by providing forwarders with the flexibility to compete with other third parties on an equal basis.

Third, it puts forwarders on an even footing with truckers when vertically integrated motor carrier/forwarder operations are more efficient than contracting out for the line haul transport of freight.

Fourth, it provides freedom to contract with shippers regarding price and service characteristics.

Last, it removes antitrust immunity for freight forwarder collective ratemaking, which forwarders no longer need or want. We understand that only one or two forwarders even belong to the Freight Forwarders Rate Bureau at this time.

There is only one change we would recommend to your fine bill, Mr. Chairman. We would include brokers of freight in the reform package. While there are relatively few regulatory restrictions on brokers compared to freight forwarders, if they wish to be different, it should be by preference, not by law.

Mr. Chairman, that concludes my prepared remarks. I have a longer statement which I previously submitted to you. I would be more than pleased to answer any questions that you may have.

Senator PACKWOOD. Mr. Secretary, thank you.

Again, we are going to hear testimony a little later today from surface freight forwarders who deal with general commodities, that deregulation is necessary for their survivial. Necessary for their survival.

In your view, will these surface freight forwarders be able to compete effectively in the future without deregulation?

Mr. HASELTINE. I do not think it is a guarantee, but I think that deregulation offers the only opportunity for them to compete fairly in the future. They have lost half of their business since 1978 and they are at a distinct disadvantage now.

So while this bill may not serve to keep them in business, it certainly gives them the opportunity to compete on an equal footing.

Senator PACKWOOD. The bill retains limited ICC authority to require freight forwarders to post a bond or other security in order to protect shippers with respect to loss or damaged cargo.

Do you think this provision is necessary, and do you believe that more extensive cargo liability standards are needed in this legislation?

Mr. HASELTINE. We do not really think that it is necessary. We believe in general that freight forwarders are good businessmen and will have proper insurance and that liability issues can be worked out with shippers.

So we think that that provision is generally not necessary.

Senator PACKWOOD. As you are aware, we still treat the household goods industry differently than we do any other form of freight shipment. And the household goods freight forwarders, with a few exceptions, by and large believe that their industry must continue to be regulated. They argue that they are dealing primarily with regulated carriers and brokers, and that therefore they have to be regulated to compete effectively.

What is your view on that?

Mr. HASELTINE. We think not. I think Chairman Taylor's summary was pretty good, but also I would add that the surface freight forwarders outside the household goods industry are also dealing with regulated carriers. So we think that is not a legitimate reason or a good reason to continue to regulate those freight forwarders. If

they wish to continue in dealing with the household goods industry as they have in the past, fine; but again, we should not dictate it.

Senator PACKWOOD. Surface freight forwarders face competition, as you are aware, from other transportation intermediaries. These include shipper agents, shipper associations, and brokers. And of these, only the brokers are now subject to any significant ICC regulation.

Do you think the brokers ought to be deregulated and, if so, how soon?

Mr. HASELTINE. Yes, we think that there is no real reason economically or from a regulatory perspective to continue to regulate brokers. We think that they should be deregulated and would suggest that that could be added to your bill.

Senator PACKWOOD. As you are aware, the bill prohibits States from regulating interstate freight forwarders in the absence of ICC regulation. How significant—assume that were taken out—I am not suggesting it should, but if it were, how significant a problem do you believe it would be if the States began regulating interstate forwarders to a substantial degree?

And the reason I ask that is we are starting to find more and more of that in the general trucking industry. We had a fair amount of deregulation in 1980—I mean fair and rather broad—and we are starting to see the States nip away at that a bit with regulations to the extent that many are now asking for preemption of the States' rights to do that.

What do you think about the freight forwarders in this regard?

Mr. HASELTINE. We agree that there is substantial potential for State regulation. We think that your section 11 would handle that problem, but we think that, indeed, such a provision is worthwhile because there is in fact potential for that happening.

Senator PACKWOOD. I very much want to leave it in the bill, and I have come to the conclusion with some reluctance because I am clearly not a Federalist that wants to preempt the States on everything. But darn it, when it comes to interstate commerce and the movement of goods—just last year we had those barrier States that we finally got rid of in terms of weights and lengths—if we are going to have a national policy, almost an international policy in some areas on the transportation of goods, it just seems to me we cannot have a helter-skelter, hit-and-miss, State series of regulations that in essence undo what we are trying to do.

Mr. HASELTINE. We are, of course, also very reluctant to preempt States within the administration, although we did so in similar areas with the Bus Regulatory Reform Act of 1982. And we, I think like yourself, Mr. Chairman, are hearing more and more complaints of State regulation of motor carriers in general. And I would be hopeful that the State legislatures and the State regulatory authorities would be enlightened enough to turn that practice around, but it is a legitimate concern and we share that concern with you.

Senator PACKWOOD. You know, it is interesting; with some temerity, we stepped into that bus situation and the preemption. And there were great cries and great fears. And with a very, very few exceptions, it has worked out well. And in terms of a public outcry, there has been none.

Of course, for any of us in politics, our litmus test is what kind of questions do we get when we go to small towns. And we have just not had a cascade of questions from small towns all over our States about "you have taken away our bus service and we are now going to disappear on the map because of it." It has not happened.

Mr. Secretary, I have no more questions. Thank you very much.

Mr. HASELTINE. Thank you very much, Mr. Chairman. It is a pleasure to appear before you.

[The statement follows:]

STATEMENT OF PHILIP HASELTINE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Department of Transportation's views regarding freight forwarder deregulation. I might add, Mr. Chairman, that we are especially pleased that you remain actively involved in surface transportation deregulation, in addition to your other important responsibilities. The quest for regulatory equality for freight forwarders—the "forgotten segment" of the trucking industry—will benefit greatly from your continued leadership.

FREIGHT FORWARDER REGULATION IS OUTDATED

Although the Motor Carrier Act of 1980 (MCA) has provided significant new operational freedoms and reduced regulatory burdens for common and contract motor carriers, most of these benefits have yet to be provided to freight forwarders. Strict freight forwarder regulation is particularly anomalous in an era of transportation deregulation and its concomitant market changes. We believe that the regulatory changes proposed by your bill are especially worthy of support, since freight forwarder deregulation is dictated by equity considerations as well as by the principles of economic efficiency. I might add that it has been over forty years since the basic framework of freight forwarder regulation was devised. The regulatory framework of 1942 is ill-suited to the transportation realities of 1985.

FREIGHT FORWARDERS AND THEIR COMPETITORS

Who are the members of this "forgotten segment" of trucking, and how do they compare with other segments of the surface transportation industry? In many ways, forwarders are similar to shippers' associations and brokers. Like the former, they consolidate shipments in order to take adavantage of truckload rates; like the latter, they bring shippers and carriers together and help meet the informational needs of smaller shippers. However, unlike either, forwarders are common carriers and, as such, are subject to more stringent regulation than either shipper's associations or brokers.

There are also many similarities between less-than-truckload (LTL) motor carriers and freight forwarders, both of whom consolidate LTL shipments into truckload lots. Like LTL common carriers, freight forwarders have benefited from easier entry policies. Also like motor common carriers, forwarders must publish and file their tariffs with the Interstate Commerce Commission. However, unlike their motor common carrier counterparts, they cannot hold "dual operating authority" and also serve as contract carriers. In addition, a freight forwarders does not provide the line-haul transportation for its shipments but, rather, must purchase this transportation from motor carriers or railroads.

The freight forwarder, as we know it today, is substantially a product of regulation—the regulation of over forty years ago. We strongly believe that the time to modernize that regulation has come and that it is time to offer to freight forwarders the same flexibilities and freedoms that are now enjoyed by other segments of the transportation industry against whom they compete.

Forwarders have no economic characteristics warranting regulation for effeciency reasons, such as substantial fixed costs and scale economies. Fixed assets and shareholders' equity for even the largest freight forwarders averaged only slightly over one million dollars in 1978. The only historical basis for their regulation was to provide consistency with the regulation of other freight modes—railroads, trucks, and barges—at the time the controls were instituted in 1942. Furthermore, forwarders must now compete on inequitable terms with other types of rapdily expanding third parties—shippers' associations, shippers' agents, and property brokers—which are

virtually unregulated. These entities are variously referred to as third parties, intermediaries, and middlemen. The terms are thus used interchangeably in this statement.

CHANGES IN TRANSPORTATION MARKETS SINCE 1980

In 1980, enactment of the MCA and the Staggers Rail Act (SRA) provided substantial deregulation of the motor carrier and railroad industries and resulted in a number of critical changes in the provision of transportation services. In the trucking industry, the freer entry brought about by the MCA has resulted in entry by new carriers, expansion into new markets by existing carriers, and greater price competition. This effect was intensified by the softening of demand and the resulting buyers' market associated with the general economic slowdown of the early 1980's. These developments have been further associated with greater pricing volatility, a dampening of inflationary rate increases, and some absolute LTL rate reductions.

An additional development associated with freer entry is a weakening of the rather rigid segmentation that has traditionally characterized some parts of the transportation industry's structure. This change is particularly noticeable in trucking, where the previously sharp distinction between common and contract carriage, for-hire and private operations, and regulated and exempt services are rapidly fading. Reduced regulation has exerted a similar influence on the functional distinctions among the various types of middlemen.

Another important post-1980 development is the rapid expansion of contracting between carriers—both rail and motor carriers—and individual shippers, relative to traditional common carriage. Such contracting involves individual negotiations of rates and service conditions, such as the degree of liability which the carrier assumes. This change has also produced a new emphasis on large volume movements, since greater committed tonnage yields shippers more favorable contractual terms regarding prices and service.

IMPACTS ON FREIGHT FORWARDERS

These developments have a number of implications for the freight forwarders, some of which are adverse. There is especially heavy competitive pressure for less-than-truckload traffic, the forwarders' mainstay, resulting in both traffic erosion and rate depression. The effect of new entry and expansion by existing motor carriers has already been mentioned. Additional pressure may also be traced to the increased competition provided by trailer-on-flatcar (TOFC) service for truckload (TL) traffic.

TOFC service has grown rapidly since it was exempted from regulation by the Interstate Commerce Commission (ICC), pursuant to the provisions of the SRA. Increased competiton for TL traffic has forced many regular route general commodity truckers to become more dependent on LTL traffic. The greater emphasis placed on LTL traffic by such carriers has cut further into the forwarders' market share and intensified rate discounting, resulting in many LTL charges which we are told are at or near (and in some cases even below) 1980 levels. In addition, property brokers are beginning to compete for the small shipment traffic of the forwarders and are likely to increase their share of this traffic. Forwarders are also hampered by restricted opportunities to gain from the increased emphasis on volume traffic associated with the proliferation of contract rates.

This new emphasis on volume rates enhances the importance of intermediaries, who can often consolidate shipments into volumes larger than those typically shipped by even relatively large shippers. The third-party role is also enhanced by the proliferation of price and service options, which complicates the ability of individual firms to keep up with developments. One result of contracting and its emphasis on volume shipments is the proliferation of unregulated property brokers and shippers' agents as direct competitors of the forwarders for this traffic. As an associated disability, forwarder opportunities to benefit from the new approaches are limited by the regulatory prohibition of contracting with either LTL or volume shippers.

Many forwarders are also disadvantaged by the asymmetry of Section 11323 of the Interstate Commerce Act which prohibits their direct control of motor carriers, but does not prohibit motor carriers from acquiring direct control of freight forwarders. This anomaly limits the potential benefits of vertical integration, thus also limiting the cost savings that could be passed on to shippers and consumers. In the absence of regulatory barriers, the distinctions between forwarders and LTL trucking firms could be expected to be much less than at the present time. A basic similarity be-

tween the two types of operations is seen in the crucial character of the assembly and distribution functins which they each perform, with the ownership status of the vehicle being quite incidental to the sophisticated operations involved. Vertical integration between motor carriers and forwarders has thus been freely available to motor carriers but not to forwarders. In fact, a 1978 DOT study indicated that at least 20 of the 54 Class A general commodity freight forwarders (representing about 40 percent of the tonnage shipped) were controlled by motor carriers. In today's highly competitive environment, there is no sound policy reason to preclude forwarders from seeking the same types of benefits from integration that are available to motor carriers.

In view of the market changes that have occurred since 1980 and the special restrictions on the forwarders' ability to respond positively to them, forwarders might be expected to lag in development behind the transport industry generally. There is some confirming evidence. As one indication, the trend in their transportation purchases from the railroads is falling well behind that of their closest counterparts, the shippers' associations. For the United States as a whole, shippers's association carloads were about the same in 1983 as in 1978, but freight forwarder total dropped by more than one-half, from 391,200 to 178,000.

WHY DOT SUPPORTS FREIGHT FORWARDER DEREGULATION

It should be emphasized, however, that the proposed deregulation is not designed as an economic relief measure, and it may fail to serve that purpose. But to the extent that the forwarders' disabilities are the result of regulatory restrictions on their right to perform economically viable services, both equity and efficiency considerations dictate that roadblocks imposed by regulation should be promptly eliminated. In order to promote both efficiency and equity objectives, forwarders must have equal flexibility in dealing with their competitors, their line-haul carriers, and their shippers.

The explicit purpose of your bill is to ensure the competitiveness and efficiency of surface freight forwarder services, which the bill asserts would be fostered by the termination of the remaining ICC responsibilities for the regulation of these operators.

The proposed legislation explicitly eliminates all statutory requirements on freight forwarders. It thus sweeps away any artificial restraints on their ability to adapt to the market changes induced by the 1980 legislation.

In conclusion, the U.S. Department of Transportation strongly supports your bill to deregulate freight forwarders for a number of basic reasons:

1. It is consistent with and advances the goal of relying on market forces whenever feasible to promote competition and efficiency;

2. It advances equity and efficiency by providing forwarders with the flexibility to compete with other third parties on an equal basis;

3. It puts forwarders on an even footing with truckers when vertically integrated motor carrier-forwarder operations are more efficient than contracting out for line-haul transport of freight.

4. It provides freedom to contract with shippers regarding price and service characteristics, including, for example, the degree of liability assumed;

5. It provides forwarders with the necessary flexibility to perform efficiently in transportation markets, fitting in where, how, and to the extent their performance permits. Any special financial hardship experienced by forwarders would then be a reflection of economic viability and not of artificial institutional constraints; and

6. It removes antitrust immunity for freight forwarder collective ratemaking, which forwarders no longer need or want. We understand that only one or two forwarders even belong to the freight forwarders' rate bureau at this time.

There is only one change we would recommend to your fine bill, Mr. Chairman. We would include brokers of freight in the reform package. While there are relatively few regulatory restrictions on brokers, compared to freight forwarders, we believe such close competitors should be able to thrive on their own merits, on the basis of what service they *do* offer, not what service they are allowed to offer.

Mr. Chairman, that concludes my prepared remarks. I would now be glad to answer any questions you or other Members of this Committee might have.

Senator PACKWOOD. Now, if we could have a panel of Mr. Lawrence Berman, Mr. John Joyce, and Mr. Herbert Kotzen.

Unless you gentlemen have arranged some other preference, I will just take you in the order that you appear on the list. Is that all right? We will take Mr. Berman first then.

STATEMENTS OF LAWRENCE BERMAN, SENIOR VICE PRESIDENT—ADMINISTRATION AND LAW, TRANSWAY INTERNATIONAL CORP., ACCOMPANIED BY ROBERT FRULLA, PRESIDENT, FREIGHT FORWARDERS INSTITUTE; JOHN F. JOYCE, PRESIDENT, WESCAR FREIGHT SYSTEM; AND HERBERT KOTZEN, VICE PRESIDENT OF TRANSPORTATION, C.H. ROBINSON CO.

Mr. BERMAN. Thank you, Mr. Chairman. My name is Lawrence Berman and I certainly appreciate the opportunity to testify today in support of S. 1124, the Surface Freight Forwarder Deregulation Act of 1985 on behalf of Transway International Corp. and the Freight Forwarders Institute.

I have been active in the area of transportation and regulated industries since 1955 and am a licensed practitioner before the Interstate Commerce Commission. I have been associated with Transway since 1973, and currently serve as senior vice president, administration and law, and a director of that company.

Transway is a diversified transportation and distribution company with extensive domestic and overseas operations including freight forwarding and related freight transportation services, marine transportation, truck trailer manufacturing, and the marketing, distribution, and transportation of liquefied petroleum gas.

Among the present Transway subsidiaries is Wescar Freight Systems, Inc. [Wescar], an intermodal transcontinental surface freight forwarder, regulated by the ICC. Mr. John Joyce, president of Wescar is also testifying today, and can describe the background and operations of Wescar probably better than I. Mr. Joyce is to my left.

I would like at this time to introduce Mr. Robert Frulla to my right, who is the president of the Freight Forwarders Institute and resident in Washington, DC.

In addition to my association with Transway, I am general counsel of the Freight Forwarders Institute which was formed in approximately 1942, and it is composed of regulated surface freight forwarders and before the ICC eased its entry policies, it represented between 70 and 80 percent of all cargo moved by surface freight forwarders.

And as an aside, with respect to that statement, I would like to refer to page 65 of the annual report of the ICC for 1984 and show you that at this time we are now up to at least FF No. 731 and Mr. Joyce probably will testify with respect to FF 47.

To my recollection, there were just a little over 100 permits when the policy of the ICC to ease entry took place.

Both Transway and the Freight Forwarders Institute wholeheartedly endorse S. 1124 which would eliminate ICC regulation of most of the operations and practices of surface freight forwarders. Indeed, it is our opinion that deregulation is necessary if the surface freight forwarders industry is to survive.

I heard the question earlier of the DOT. I agree with the DOT's position that this is certainly not a guarantee of our success and our survival in the future, but I can attest to the fact that without it, it is guaranteed that we will not survive.

The loss of the industry would not only be devastating to the forwarders and their employees, but I believe detrimental to the public interest as well.

Mr. Chairman, as you pointed out in your statement, introducing similar legislation during the last Congress, the freight forwarding industry plays and has played a crucial role in the freight transportation system in the United States. Small-and medium-sized shippers depend upon freight forwarders to arrange for cost-efficient and expeditious transportation of their goods.

Forwarders, among other things, consolidate small shipments, that is, less-than-trailerload or LTL freight, into full trailers, containers, or rail carloads, thus permitting small shippers to share in the economies and efficiencies that might otherwise be available only to large shippers.

It should also be noted that freight forwarders have been pioneers in the development of intermodal transportation. The regulatory reform of the railroad and trucking industries in 1980 achieved through the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980, has placed freight forwarders at a severe competitive disadvantage with the trucking and rail industries, and with shippers' agents, brokers, and others who use such carriers and do not have to themselves publish rates and/or rules.

It has also created a situation in which forwarders are unable to coordinate their services with their unregulated, underlying carriers because of the regulatory burdens imposed on forwarders, making it impossible for them to respond to changes in the rates and services charged by such carriers.

I do not believe such results were intended by Congress when it substantially deregulated railroad and trucking industries.

The impact of the regulatory reform legislation of 1980 on the surface freight forwarding industry has been substantial. I believe the experience of Transway in this regard is not only illustrative, but representative of the industry as well.

In 1979 Transway had seven subsidiaries engaged in freight forwarding and others engaged in related services. In that year, Transway's entire transportation operations employed 2,495 persons, earned approximately $16 million in operating profits on $325 million in revenues. Between 1979 and 1984, the surface freight forwarding operations was consolidated through mergers and termination of unprofitable companies into one remaining company—Wescar.

In 1984, the entire freight transportation operations employed 1,145 persons, reported an operating loss of $5.2 million. I reiterate: a loss of $5.2 million on $208.5 million in revenues.

Surface freight forwarding operations accounted for almost the entire drop in the number of employees and in revenues and earnings. Moreover, the magnitude of this reversal is even greater than the $21 million difference in earnings performance for the years 1979 and 1984.

Since that time, Transway has been able to achieve $20 million in annualized savings in operating costs through the consolidation of its domestic forwarders. The dramatic decline in revenues and profits from surface freight forwarding operations, notwithstanding our reorganization and cost-cutting measures, admittedly cannot be

attributed solely to the 1980 regulatory reform of the railroad and trucking industries. But we consider the major cause of that decline to be our inability to respond competitively to the practice of the railroads and motor carriers made possible by the 1980 legislation and to the activities of shipper associations, shippers' agents, and brokers who can take advantage of those practices.

The continued ICC regulation of freight forwarders is unnecessary. Deregulation would promote competition within the freight forwarding industry and between freight forwarders and railroads, trucking companies, agents, and brokers. Freight forwarders no longer need or desire antitrust immunity for collective ratemaking activities, with its attendant burdens and costs, nor is there any justificaton for substantial entry and licensing requirements, which have been administratively abandoned by the ICC, in any event. We do note, however, that section 8(d) of S. 1124, would retain limited ICC authority to impose a requirement that freight forwarders post a bond or other type of security to protect the users of forwarding services from loss or damage to cargo tendared to forwarders. We support this provision as an appropriate and least intrusive method of protecting the public from underfinanced or "fly-by-night" forwarders.

Mr. Chairman, we appreciate your eforts to bring this much-needed change in the Government regulation of the surface freight forwarding industry. Please free to call upon us for any assistance we can provide. I would be happy to answer any questions you might have at this time. Thank you.

Senator PACKWOOD. Gentlemen, I have read your statement. In fact, all of the statements will be in the record. Let me tell you why I do this. I make the statements come in ahead of time so I can look at the questions and phrase what I want to, and as long as I am the only one here and I have read them, you don't need to reread them to me when I have read them just the night before anyway.

Thank you.

Mr. Joyce.

Mr. JOYCE. Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear before you to offer the support of Wescar Freight Systems, Inc. for the Surface Freight Forwarder Deregulation Act of 1985.

My name is John F. Joyce. I have been involved in the surface freight forwarding industry since 1947 and am currently president of Wescar, the largest surface freight forwarding company in the United States.

Wescar is a wholly owned subsidiary of Transway International Corp. and was formed in the fall of 1984 as a result of the merger of the two remaining surface freight forwarding companies in the Transway group, which as recently as 1979 included seven freight forwarder companies engaged in the transportation and related services.

The merger was designed to reduce costs, achieve higher operating efficiencies, and to respond to the changes in the freight transportation industry, particularly the less-than-trailerload segment of the industry, brought about by the deregulation of motor and rail carriers in 1980.

Even with this reorganization and improvements in our operations, Wescar, like all regulated surface freight forwarders, is at a distinct disadvantage of our competitors, motor and rail carriers and shippers' agents and brokers who have benefited from the deregulation of the trucking and railroad industry.

This unequal competitive situation threatens the viability of the surface freight forwarding industry. As a result, surface freight forwarders should be deregulated as quickly as possible, and we urge the expeditious enactment of S. 1124.

Though perhaps less well recognized than other common carriers, freight forwarders are an integral part of this country's surface freight transportation system. Forwarders are intermodal carriers who take freight from shippers, usually in small shipments, combine it with the freight of others, and send it on its way via motor or rail carrier. The circumstances that forwarders are both competitors and users of motor and rail carriers presents the regulated surface freight forwarders with two types of problems.

First, the forwarder must compete with the motor and rail carriers but are at a disadvantage in the area of pricing or ratemaking. The unregulated motor or rail carrier can quote a rate or a price to a shipper or a consignee on the spot, and some carriers have been known to make those quotes retroactive.

The regulated forwarder, such as Wescar, on the other hand, is still required to publish its rates and file them with the ICC. The rates are also subject to a statutory notice period before they can become effective. Although forwarders may file freight-all-kinds rates on only a 1-day notice, the paperwork and communications required to file and to publish that rate actually results in a 2- to 5-day process.

Finally, the filing and publishing rates is a cost that is borne only by the regulated forwarder. This expense can be thousands of dollars a year for a single forwarder.

Second, because the forwarder is an intermodal carrier, it relies upon and is closely integrated with underlying motor and rail carriers. This intermodal operation relationship has been substantially disrupted by the selective deregulation of surface transportation in 1980. A good example of the problem is in the use of railroads as underlying carriers. A railroad is the prime underlying long-haul carrier for approximately 95 percent of Wescar's traffic.

Over the last 20 years, the boxcar has been replaced as the medium used by forwarders in rail movements by piggyback, also known as the trailer on flat car. The ICC, under the authority of the Staggers Rail Act of 1980, deregulated TOFC over 3 years ago. As a result, the railroads, our underlying mode of transportation, are completely deregulated while the surface freight forwarders, the largest users of TOFC, are regulated.

The railroads can at will raise or lower rates and change rules on loading requirements, claims, or opening and closing of ramps at a moment's notice. Because forwarders are regulated and must publish our rates with a notice period, we cannot respond in a timely manner.

We frequently accept freight at a published rate based on a rate or rules of an underlying carrier that will have changed before we have had a chance to accommodate the new rate or rules in our

rate. It should be apparent that is not a purposeful or feasible way to conduct business. If surface freight forwarders are to continue to operate in the public interest as a viable transportation service for LTL freight, we must be allowed to operate under the same rules as our competitors and underlying carriers.

Mr. Chairman, S. 1124 is a necessary and appropriate measure. We offer our support and whatever assistance we can provide to get it passed.

Thank you.

Senator PACKWOOD. Thank you.

Mr. Kotzen.

Mr. KOTZEN. Mr. Chairman, I am Herbert Kotzen, vice president of transportation for C.H. Robinson Co. of Minneapolis. C.H. Robinson is an international produce and transportation company with 44 offices and with sales of $700 million in 1984. We have been in the business since 1905.

I am pleased to speak in favor of this bill to deregulate freight forwarders. We have been involved in both regulated and exempt transportation for over 30 years. We currently own an irregular route common and contract carrier with estimated revenues of $40 million in 1985. We hold a property broker's license and are very active in exempt motor carriage, but we act as a freight contractor.

In 1984 we moved over 200,000 loads of exempt freight via motor carrier, anything from peanuts to cotton, from powdered milk to animal feed, from newspaper supplements to peat moss.

In the exempt sector, we provide flexible, innovative services that we are not allowed to provide in the regulatory sector. In the exempt sector we have made it a practice to take complete responsibility for the shipment from the time we accept it to the time it is delivered. We pay the carriers promptly and we pay truckers who walk into our offices with clear delivery receipts immediately.

We pay the truckers whether the shipper pays us not, and we pay justified claims, even if the carrier doe not. We send out computer-generated confirmations to all the parties involved in the transactions, stating the terms so that there are no misunderstandings as to our position. As you can see, we are a financially responsible party.

We perform these functions not because a government agency says we must; we do it because we know it is good business to do so. Our business has grown because we perform these services quickly, flexibly, and reliably. And we welcome new innovations.

The current regulatory structure makes it hard for us to operate in the same efficient way we do in exempt, because if we do, we are defined as a freight forwarder. We cannot guarantee the shippers' and carriers' performance and are subject to excessive Government rules and regulations which make us uncompetitive, increase costs to everyone involved, and prevent innovation.

We also think that exempt forwarders should be able to use motor carriers which are themselves exempt when they serve him. Only safety regulation is needed.

We would take financial responsibility for the shipment and responsibility for the performance of the carrier. Therefore, we should have the flexibility of pricing our services to meet the

demand and the ability to select from as broad a range of carriers as possible.

Without qualifying our support for the freight forwarder legislation, I would like to point out that the transportation of frozen food is another area in which immediate deregulation would be warranted and productive. In my estimation, it costs about 10 percent more to haul food products that are regulated than exempt.

The interpretation of what is exempt and what is not is inconsistent and, to be quite frank, ridiculous. I cite a few examples. Fresh citrus fruit sections, cold pack or semifrozen, are exempt; but frozen citrus sections are regulated. However, if the fresh citrus sections are packed with water, sugar, citric acid, and benzoate soda, even though they are not frozen, they are also regulated.

All forms of eggs, whether dried, frozen, powdered, or fresh in the shell, are exempt; but egg yolks, frozen, or containing approximately 10 percent salt or sugar, are regulated.

I can cite many more examples, but the one that vividly shows the problem is the case of the very familiar TV dinner. These dinners, which include frozen vegetables, frozen desserts, and generally a main dinner item, are all basically the same. Chicken, turkey, or fish dinners are exempt, but if you substitute the chicken, turkey, or fish portion with a hamburger patty, it now becomes regulated.

This type of regulatory unreasonableness must end.

I note that one organization proposes that regulation of claims be retained. We suggest that claims should be deregulated as well as rates and entry. Please note that in the exempt transport area, claims are handled quickly and efficiently.

In my own case, which covers 34 years of experience, involving hundreds of thousands of dollars and hundreds of thousands of shipments, I have had very few court cases.

In sum, Mr. Chairman, we fully support the proposal before you today and I hope you go a few steps further and allow the freight forwarders full and complete opportunity to use all types of carriers without tariffs or other nonsafety regulations. We also commend your attention to the possibility of including the exemption for frozen food transportation.

It is a pleasure to be here today, and I am very happy to be able to state my views.

[The statement follows:]

STATEMENT OF HERBERT KOTZEN, C.H. ROBINSON CO.

Mr. Chairman and members of the Committee, I am pleased to have the opportunity to testify in favor of S. 1124, a bill to exempt freight forwarder operations from economic regulation by the Interstate Commerce Commission.

I am Herbert Kotzen, Vice President of transportation for C.H. Robinson Company of Minneapolis. C.H. Robinson is an international diversified employee owned company with 44 offices. Our sales in 1984 were over 700 million dollars and we have been in business since 1905. I have been an employee for 34 years and an officer for 14.

We favor this legislation because it would permit us and other firms like us to operate more economically and efficiently in interstate commerce, affording us another tool to satisfy our customers and attract additional business.

Let me give you a little background on our company, to help explain this point of view.

The C.H. Robinson Company has, over eighty years since its origin in 1905, grown to be a substantial broker of fresh fruits and vegetables in the United States and internationally; a shipper, packer and sales agent for agricultural products; a provider of equipment finance; a full service finance company offering insurance and other services in the Minneapolis area; a regulated carrier of general commodities; and, we believe, the largest broker of truck transportation in the United States.

We have been involved in regulated transportation since the mid 60's and currently own an irregular route common and contract carrier with estimated revenues for 1985 of 40 million. We also hold a property brokers license and utilize contract carriers to move a wide variety of regulated commodities. We have over 15,000 carriers that we have worked with during the past years. Since 1953 we have been active in the exempt motor carrier field and in 1984 we moved over 200 thousand truckloads of exempt freight.

We think our longevity and growth speak for themselves. We are dedicated to innovation and to performing quality service. We rely on the most modern, state of the art computer equipment to provide extraordinary service.

I feel deregulation has been extremely good for the transportation industry. It has made us more flexible, able to react quicker to market conditions, and allows us to perform additional services. Deregulation has increased competition, improved service and most importantly reduced costs to the American consumer.

I am here to lend our support to the efforts to deregulate freight forwarders from ICC jurisdiction. I feel this Bill will enable us to perform additional services for our customers and consequently benefit the public.

Let me touch on some aspects of our brokerage operations which will lay the groundwork for comments to be made on your draft legislation. In the exempt sector, particularly, Robinson has made a practice of taking the responsibility to pay the carrier whether the shipper pays Robinson or not, and to pay the shipper's justified claims even if the carrier does not. We reserve the right to make a determination as to whether the carrier has performed its duty and whether a shipper's claim is proper. We act as a financially responsible party.

C.H. Robinson assumes responsibility for the shipment from the time we accept the freight until the time it is delivered. We send out computer generated confirmations to all parties involved including the carrier, stating all the terms and conditions of the agreement so that all parties are clearly informed of their responsibilities. We do this not because a government agency says we must, we do it because it is a good business decision to do so.

Our business has grown in both exempt and regulated brokerage since the 1980 motor carrier act. We live by our word and we could not succeed without the excellence and quality of our services. We welcome and take advantage of innovations in transportation and our continued success depends upon what we can do for our customers, not what we cannot do.

We match shippers and carriers quickly, flexibly, and reliably; often as fast as telephone conversations can be made. We keep our paperwork to a minimum; we have late model, large scale computing equipment and we keep our business records accurate and current.

But the current regulatory structure makes it difficult for us to extend this service to regulated shipments. If we wish to pay a shipper's justifiable claim as a matter of course, we are defined as a freight forwarder. And if we are classified as a freight forwarder, we immediately encounter a host of regulations which increase the costs and decrease the flexibility of our operation. We have considered becoming a freight forwarder, but regulatory baggage entirely unrelated to our willingness to assume end to end responsibility to the shipper has thus far discouraged us.

Forwarders are subject to tariff regulation, regulation of their contracts with contract carriers, absured limits on common ownership with carriers which legally can be circumvented but add paperwork and costs, and numerous other incidents of the pre-1980's—indeed, early 1900's—regulatory era. To expect a company like Robinson to try to function in that straightjacket is unreasonable, especially in the increasingly competitive transportation market we have today.

Thus, we heartily support the initiative to clean out this mare's nest of restrctions. Let me add that the freedom from regulation which would extend to forwarder pricing and record keeping should also extend to the carrier serving the forwarder. The exempt forwarder should be able to use carriers which are themselves exempt in serving him. Only safety regulation is needed. If we are going to take financial responsibility for a shipment, then we will take responsibility for the performance of the carrier in order to insure flexibility of pricing and service. He ought not be bound to follow a common carrier tariff.

Since the 1980 Motor Carrier Act, we have rapidly expanded our regulated broker operations while trying to make them as efficient as the exempt transport brokerage operations. One of our most successful tools has been a program of lining up contract carriers for our regulated brokerage arm. Since contract carriers do not have to file tariffs, or schedules of rates, with the Interstate Commerce Commission, we can reapidly settle on prices with regulated contract carriers which meet particular shipper demands, to the benefit of the shipper and carrier, as well as ourselves. We find that well established, national-scale carriers, as well as small carriers and owner operators, are eager to sign up as contract carriers to our regulated brokerage arm. At the repesent time we have over 150 carriers and over 12,000 pieces of equipment under contract.

Even thought we've had some success in lining up contract carriers for our brokerage operations, I can tell you that we could have expanded that operation at a significantly faster rate were we not required to push hundreds of applications through the ICC licensing process.

Though we understand that there is widespread general support for this legislation, we are not sure that all appreciate just how important an apparently simple bit of streamlining can be. But we do appreciate this. Our experience in the exempt transport sector has proven that seemingly small efficiencies can add up to a large benefit to the shipper. Being able to establish a price in minutes instead of hours makes a difference.

Being able to change a price in minutes or a day, with a phone conversation or perhaps a letter, instead of days to a month with a regulatory filing, means a lot. Having simple, lean, clean records keyed to buiness requirements, rather than to post hoc regulatory review, saves people money and time. Saved files save money. Saved people save money. Saved time in getting the load delivered makes the carrier money. He can do more and make more in a day, a week, and a year.

In one area of transportation—transport of frozen foods—we have an opportunity to make close comparisons of the cost of doing business the regulated and the exempt way. We find about a 10% difference.

Without qualifying our support for the freight fowarder legislation, I would like to point out the frozen food transportation as another area in which immediate deregulation would be warranted and productive.

Frozen food has become a major element of the United States food chain. According to industry statistics, the value of frozen foods was in excess of $30 billion in 1983. Estimated transport costs exceed $1 billion. One need only visit the supermarket to sample a wide variety of frozen vegetables, meats, concentrates, and other items. Our restaurants and cafeterias are fed by a steady stream of frozen food supplies.

Interstate transport of milk, fruits, vegetables, poultry, shell fish, and similar products of field, ocean and stream has been exempt from Interstate Commerce Commission regulation from 1935. We have had efficient and economical transport of such commodities.

However, if fruits and vegetables are frozen, their transport generally is made subject to Interstate Commerce Commission regulation. The public saw in 1980 that the justifications for making distinctions between "raw" and processed agricultural products for purposes of transport regulation are weak. We believe the public has since seen that lessening regulatory controls in the regulated area have improved transport prices while service equality has remained high. The rationale for continued regulation has worn steadily thinner.

The weakness of any rationale for continuing regulation of frozen foods transport is apparent from looking at present patterns of regulation and exemption. The growth of food processing in the economy and the irregular contours of the exempt area have produced numerous absurdities. Partially frozen cranberries are exempt from ICC regulation. Flash frozen cranberries are not, but if the frozen cranberries or other frozen vegetables are in a chicken, turkey or fish frozen dinner they become exempt again. Exchange the chicken, turkey or fish with a hamburger patty and the cranberries and vegetables become regulated. A truck rolling down the highway with a variety of frozen foods in it would seem to be partially regulated and partially not. Further, the piggyback trailer which has the same contents on a train paralleling the highway is entirely exempt from ICC regulation. The ICC has the power to exempt elements of rail transport from regulation, notwithstanding the widespread concern among some shippers that railroads can in some circumstances use significant market power. The ICC cannot exempt portions of truck transport from regulation, though it is widely understood that if the antitrust laws are enforced there can be little market power in truck transport.

In sum, Mr. Chairman, we fully support the proposal to deregulate freight forwarder operations. Indeed, we hope you do a thorough job of it and allow the freight forwarders full and free opportunity to use carriers without the regulatory paraphernalia of tariffs and the like. We would also commend to your attention the possibility of broadening the bill slightly to include the exemption of frozen foods transportation.

We are concerned these days with the changes that have occured recently in all modes of transportation and I feel strongly that the changes have improved service and reduced rates to the betterment of the public. Sure, there are still people promoting the old "green eye shade theory" and there are still people longing for the "good old days," before 1980, but aren't these people in an overwhelming minority, and aren't these the same people who are unable to operate in this highly competitive environment and want to go back to their "warm bed." These people are running on memory rather than intuition and innovation.

Transportation has become a marketing, customer driven industry. Deregulation has been good for the public and I feel that deregulation of freight forwarders will also be good for the public. This is a natural step in the evolution of the transportation industry to enable it to serve the public more flexibly, efficiently and at less cost.

Senator PACKWOOD. Thank you, sir.

Mr. Berman, you state in your testimony that freight forwarders no longer need or desire antitrust immunity for collective ratemaking. Why do you believe this is true, and to what extent do general freight forwarders engage in collective ratemaking now?

Mr. BERMAN. Well, I am glad the word "now," because as of last week we have had to dissolve the nonprofit Freight Forwarders Tariff Bureau. We dissolved it because there was a lack of membership. There was a lack of membership because freight forwarders historically, under the antitrust immunity in the Interstate Commerce Act, have not made rates in concert.

They did have a conference to discuss rates, but every carrier filed independently or through the Bureau.

Senator PACKWOOD. So as of last week you dissolved it?

Mr. BERMAN. Yes.

Senator PACKWOOD. Congratulations. I did not know that.

Mr. BERMAN. I was not sure until I came.

Senator PACKWOOD. I am glad to know that and glad to have it for the record. I am proud of you. Thank you.

You also noted in your testimony your support for the legislation's requirements that freight forwarders post a bond or other type of security to protect the users of forwarding services.

At the moment, the legislation requires the bond be posted with the ICC. Do you think that is the appropriate place, or should we move it over to the Department of Transportation, or do you have some other suggestions?

Mr. BERMAN. I do not really care where it is posted. We do have an interest in posting. Obviously, those of us who have been in the business a long time and are associated with large corporations such as Transway want it known that we are substantial citizens and are able to post a bond for the protection of the service to be performed in the future.

Senator PACKWOOD. We are going to hear testimony a little later today urging retention of the Carmack amendment as it applies to freight forwarders. Do you think it's necessary?

Mr. BERMAN. Yes, sir.

Senator PACKWOOD. Why?

Mr. BERMAN. And I agree. By the way, I agree with the Chairman of the Interstate Commerce Commission, Reese Taylor's view of it. I think it is covered here. But if not, I notice that Mr. Augello is going to testify later as to whatever it takes to redraft this bill to make sure it is in there, I think it should—it should be in there to protect the public.

Senator PACKWOOD. So you do not want to go to the miscellaneous State liability standards?

Mr. BERMAN. That is right, sir.

Senator PACKWOOD. You want to keep the Carmack amendment—or the equivalent of it.

Mr. BERMAN. The equivalent of it. Yes, sir.

Senator PACKWOOD. All right.

Now, Mr. Joyce, you said in your testimony that the current regulatory requirement that you file and publish your rates imposes a high cost on freight forwarders. How costly is it? Can you give me some examples and maybe quantify it?

Mr. JOYCE. I do not think I can come down with some exact costs here. We have to keep a department of staff of about six people within Wescar doing this process of getting the rates put together, filing them down here at the Commission, and making sure that they are distributing the information throughout the system.

Senator PACKWOOD. Six people out of how many?

Mr. JOYCE. Six people are kept on that specific job, doing that.

Senator PACKWOOD. Out of how much of your total employment?

Mr. JOYCE. Oh, we have approximately 1,000 people.

Senator PACKWOOD. How significant an operational problem are the current filing requirements, or are these just basically busy work for these six people?

Mr. JOYCE. It is just busy work is what it is.

Senator PACKWOOD. It does not really interfere with your operations; it is just unnecessary.

Mr. JOYCE. It does not interfere with the operation. It is the case of following along with the rules. Basically, in today's market, it is an unnecessary part of staying in business.

Senator Packwood: Basically, you just have salaries for six people you do not need is what it amounts to.

Mr. JOYCE. Yes, sir.

Senator PACKWOOD. Mr. Kotzen, you indicated that if this legislation passed, you could perform additonal services for your customers.

Again, can you elaborate a bit? What could you do that you cannot do now if we pass this legislation?

Mr. KOTZEN. Well, at the present time we are not involved in any LTL operations for one thing. In addition, we could make our customers more available to the services that we perform. We get asked lots of times to perform services in the regulated field with the same customers that we are working with in the exempt field, and not be able to do the same thing, sir.

Senator PACKWOOD. Good answer.

You also indicated that you think we should extend freight forwarder deregulation to the carriers that are serving the freight forwarder. Why do you think this would be beneficial?

Mr. KOTZEN. Well, in the exempt field where we take the full responsibility from end to end, it does not matter whether the carrier has authority to haul it or not; it is exempt. And if we take full responsibility from end to end, what responsibility does the carrier need under Government regulation? They do not need any.

If the forwarder is willing to accept the responsibility from end to end, why does the carrier have to be regulated?

Senator PACKWOOD. Can you see any downside to the carrier? Would it hamper their operations in any way as far as you can tell?

Mr. KOTZEN. No; I think it would make the carriers that more viable to the public.

Senator PACKWOOD. I agree. Good answer.

Gentlemen, thank you. I have no more questions.

Now can we take Mr. Henry Karel, Mr. Stanton Sender, and Mr. William Augello.

Why don't we start with Mr. Karel, unless you gentlemen want to go in some other order. Go right ahead.

STATEMENTS OF HENRY M. KAREL, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL SMALL BUSINESS SHIPMENTS TRAFFIC CONFERENCE, INC., ACCOMPANIED BY DAN SWEENEY, GENERAL COUNSEL; STANTON P. SENDER, TREASURER, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE; AND WILLIAM J. AUGELLO, EXECUTIVE DIRECTOR/GENERAL COUNSEL, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC., ACCOMPANIED BY JAMES SPENCER, PRESIDENT

Mr. KAREL. Thank you. It is a pleasure to be here.

My name is Henry M. Karel, and I am the director of distribution of Cleo Wrap with offices at 4025 Viscount, Memphis, TN. I am appearing today in my capacity as chairman of the legislative committee of the national small shipments traffic conference [NASTRAC]. I am also authorized to submit this statement jointly on behalf of the drug and toilet preparation traffic conference.

Dan Sweeney, our general counsel, is here also.

NASSTRAC consists of over 275 shipper members whose primary focus is upon less-than-truckload [LTL] shipments, as they are predominantly LTL shippers. The drug and toilet preparation conference consists of approximately 80 companies who are leaders in the manufacture and distribution of drugs, medicines, toilet preparations, and related items.

Both NASSTRAC and the drug and toilet preparation conference members tender substantial volumes of shipments to the freight forwarder industry throughout the United States.

The purpose of the bill is to accomplish the economic deregulation of the surface freight forwarder industry. We agree with that objective, and strongly support it.

The bill is designed to take the freight forwarders completely out of the Interstate Commerce Act. However, there are some provisions of that act which provide protection to the shippers outside of economic regulation. Our conferences are concerned that the present bill without modification would unwittingly reallocate the legal responsibilities between the freight forwarders and the ship-

per customers in the important areas of freight loss and damage and overcharge claims.

The present Interstate Commerce Act provides in section 11707 for all carriers, including forwarders, that they shall issue a bill of lading for the property received and be liable for the actual loss or damage caused by a carrier en route. It further provides that it may not unilaterally limit its liability.

This bill, as drafted, would remove the requirement for a freight forwarder to provide a receipt or a bill of lading for the freight received from the shipper, and it would remove for no reason the statutory requirement that the freight forwarder pay for loss and damage. It should be underscored that the section noted is not economic regulation, but rather a statutory recognition that the freight forwarder, as are other carriers by statute, should be responsible for loss and damage it creates.

A qualified exception to full liability is currently provided for freight forwarders in section 10730(a), whereby a forwarder can establish a rate under which the liability is limited to a value stated in writing by the shipper. It further provides that the value be reasonable under the circumstances surrounding the shipment, thereby ruling out tariff items which would zero out the carrier's liability or set deductibles from prospective recovery.

Since the proposed bill removes the basic rule of liability from section 11707, it correspondingly removes the limited exception to liability from section 10730(2).

Finally, section 11706 of the Interstate Commerce Act should be retained on the books, as it is simply a statute of limitation allowing shippers 3 years within which to file for overcharges by freight forwarders and other carriers. If that section were thrown out, there would no longer be a statute of limitations, and a forwarder could unilaterally cut down the period for overcharge claims to an unrealistic short period so as to retain unjust overcharges.

There is no public policy which would favor abandoning the reasonable statute of limitations which is on the books today.

That sums up my testimony.

[The statement follows:]

STATEMENT OF HENRY M. KAREL, DIRECTOR OF DISTRIBUTION, CLEO WRAP

My name is Henry M. Karel, and I am Director of Distribution Cleo Wrap with offices at 4025 Viscount, Memphis, TN. I am appearing today in my capacity as Chairman of the Legislative Committee of the National Small Shipments Traffic Conference, Inc. (NASSTRAC). I am also authorized to submit this statement jointly on behalf of the Drug and Toilet Preparation Traffic Conference, Inc. (D&TPTC).

NASSTRAC consists of over 275 shipper members whose primary focus is upon less-than-truckload (LTL) shipments, as they are predominantly LTL shippers. They are general commodities shippers shipping a wide variety of goods in packages.

D&TPTC consists of approximately 80 companies, who are leaders in the manufacture and distribution of drugs, medicines, toilet preparations, and related items. The nature of their shipments is predominantly LTL and includes millions of shipments annually to receivers such as drugstores, hospitals, etc.

Both NASSTRAC's and D&TPTC's members tender substantial volumes of shipments to the freight forwarder industry throughout the United States.

SUPPORT FOR THE BILL

The purpose of the Bill is to accomplish the economic deregulation of the surface freight forwarder industry. We agree with that objective and support it.

Traditionally, the freight forwarder has been an important vehicle for the smaller shipper to accomplish its distribution on an economical and efficient basis. Furthermore, the savings accomplished by lower rates, through the forwarder's combining shipments into larger volume shipments, are particularly beneficial to the smaller shippers by making them competitive with larger companies. Therefore, by deregulating freight forwarders and giving them added rate flexibility, this Bill should benefit small shippers.

Furthermore, in view of the recent deregulation of TOFC and much boxcar traffic, as well as the extreme leeway for ratesetting which has been extended by the Interstate Commerce Commission to the motor carrier industry, it is evident that this boost from deregulation is necessary for the freight forwarder industry to compete with these industries on a somewhat equal footing.

A CAVEAT

The Bill is designed to take the freight forwarders completely out of the Interstate Commerce Act. However, there are some provisions of that Act which provide protection to shippers outside of economic regulation. Our Conferences are concerned that the present Bill, without modification would unwittingly reallocate the legal responsibilities between the freight forwarders and their shipper customers in the important areas of freight loss and damage and overcharge claims.

Recent experience with the TOFC exemption showed a very swift reaction by the railroads in moving to cut back on their common law liability and sharply curtailing from the statutory period for filing claims when they perceived that they had been "exempted" from such requirements. The present Interstate Commerce Act provides in Section 11707, for all carriers, including forwarders, that they shall issue a bill of lading for the property received and be liable for the actual loss or damage caused by a carrier enroute. It further provides that it may not unilaterally limit its liability. This Bill, as drafted, would remove the requirement for a freight forwarder to provide a receipt or bill of lading for the freight received from the shipper. And it would remove for no reason the statutory requirement that the freight forwarder pay for loss and damage. It should be underscored that the section noted is not "economic regulation" but rather a statutory recognition that the freight forwarder, as are other carriers by statute, should be responsible for the loss or damage it creates.

A qualified exception to full liability is currently provided for freight forwarders in Section 10730(a), whereby a forwarder can establish a rate under which the liability is limited to a value stated in writing by the shipper. It further provides that the value be reasonable under the circumstances surrounding the shipment, thereby ruling out tariff items which would zero out the carrier's liability or set deductibles from prospective recovery. Since the proposed Bill removes the basic rule of liability from Section 11707, it correspondingly removes the limited exception to liability from Section 10730(2). There is a continuing necessity for the federal law to prohibit exculpatory clauses from liability, except those which are on the basis of a rate applicable to reasonable released value of the shipment, and it is important that the provisions in effect today not be repealed. Absent the ICC's jurisdiction, the statute could be amended to leave it to the federal courts to decide whether particular released liability rates are reasonable under the circumstances.

Finally, Section 11706 of the Interstate Commerce Act should be retained on the books, as it is simply a statute of limitations allowing shippers 3 years within which to file for overcharges by freight fowarders and other carriers. If that section were thrown out, there would no longer be a statute of limitations and a forwarder could unilaterally cut down the period for overcharge claims to an unrealistically short period so as to retain unjust overcharges. There is no public policy which would favor abandoning the reasonable statute of limitations which is on the books today.

Senator PACKWOOD. Mr. Augello.

Mr. AUGELLO. Mr. Chairman, I would like to introduce first the president of the Shippers National Freight Claims Council, Mr. James Spencer from American Dade Co. in Miami. He will be accompanying me to help me answer any possible questions.

My testimony has been reduced to writing. You also have a summary. And I would like to just focus on one or two things that you heard this morning from the Chairman of the Commission and the DOT. And that is, the need for insurance. And as you know, in my

testimony, I have added the need for statutory agents being designated for freight forwarders, as are motor carriers.

One of the most important things that the Interstate Commerce Commission ever did for the shipping public was to promulgate its mandatory cargo insurance requirements pursuant to the statute. They are in effect today. They permit a shipper to recover up to $5,000 per vehicle in the event the motor carrier goes bankrupt.

And in view of the fact that there were 1,400 motor carrier bankruptcies last year reported by Dunn & Bradstreet, you can well imagine how important that provision has proven to be. And we are very happy to hear that the freight forwarder people that testified today support the retention of that security agreement.

I am just afraid that the Commission and the DOT do not realize how important that provision is and must be retained, no matter what we do with deregulation of motor carriers or freight forwarders.

As you know, we are very strongly for retention of all liability regulations to protect the public, and it should be the third element of exception to the deregulatory process, safety and insurance being the others. The reason is that the marketplace simply has not produced any beneficial results from deregulation with respect to liability issues.

The railroads and the airlines have proven that we do not have to resort to conjecture. The Carmack amendment is the cornerstone of that amendment, and it should be retained. Freight forwarders are in favor of that because they are shippers vis a vis the carriers, and it protects them as well.

One point that needs some attention is the released rates provisions. As you just heard, Mr. Karel supported retention of those. We have drafted some language which really codifies the common law, the public policy of this Nation in that respect. And I would like to add one provision which apparently was inadvertently overlooked, and that is a prohibition against—well, we said that there should be a prohibition against deductibles. But there should also be a prohibition against automatic releases.

And if you are looking for an example to give to your 13-year-old daughter when she is questioned about truck deregulation, I think I can give you one which will ring a bell with her. For instance, if you are shipping a steamer trunk off to camp or to college with one of your children, and they pack that with her worldly goods, and give it to a common carrier, a general commodity carrier, and it is lost, the maximum that you can recover if you do not sign anything else on that bill of lading is 10 cents a pound. That is called an automatic release, as distinguished from a true released rate where the shipper agrees in writing on the bill of lading to a stipulated amount.

And that has been one of the most objectional features of released rates that exempt carriers have come up with. Fortunately, the Interstate Commerce Commission has declared those to be unlawful, but there is not much enforcement. And we would strongly recommend that that prohibition be codified so that we will not suffer erosion in the future.

You note that I have added a requirement for statutory agents. I do not know how we overlooked that in the past. But that is a very

valuable tool for, for instance, anyone who is injured by a truck accident, and freight forwarders do operate vehicles on the road on occasion. And it is also a very beneficial feature for anyone who has a cargo claim and is not located in the jurisdiction in which the freight forwarder or multicarrier is located. And so that should be given some very serious consideration.

And the last is the deductibles. The ICC created a very dangerous precedent when they interpreted section 10730 as permitting deductibles in the form of a released rate. The dangerous precedent is that despite the fact that Congress permitted deductibles for railroads only, in subsection (c) of that section, ICC interpreted that as being permissible for motor carriers and freight forwarders in subsection (a) and (b). And I think that was not intended by Congress and it should be rectified immediately.

Thank you.

[The statement follows:]

STATEMENT OF WILLIAM J. AUGELLO, EXECUTIVE DIRECTOR GENERAL COUNSEL, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.

On behalf of the membership of the Shippers National Freight Claim Council, Inc. (hereinafter "Council"), consisting of over 700 national corporations interested in the improvement and preservation of carrier liability standards and the reduction of loss and damage claims which amount to over one billion dollars a year, I wish to thank the Committee for this opportunity to address the legislation under consideration which would reduce regulation of surface freight forwarders.

SNFCC'S POSITION

With respect to the Staff Working Draft dated May 1, 1985, the Council's position is that the public interest mandates retention of the laws and regulations protecting the public with respect to the loss, damage and delay of goods moved by freight forwarders, those relating to the filing of claims for overcharges, undercharges and other freight charge disputes, and related regulations.

The Council takes no postion with respect to the deregulation of freight forwarder rates or entry controls.

LOSS, DAMAGE AND DELAY CLAIMS

Our plea for retention of liability regulation is not based on conjecture. It is based on shippers' experiences with carrier managements' reaction to complete deregulation of other modes of transportation. Consider, for example, the railroad industry's reaction to the new freedoms granted in the Staggers Act of 1980. Statistics reveal that railroads have been able to evade payment for negligent loss, damage or delay of rail shipments in the amount of $160 million a year as a direct result of the Staggers Act of 1980. In 1980, the railroads paid $324,513,612 in loss and damage claims. In 1984, the claim payments were only $160,990,950. This 50% reduction in claim payments is attributed largely to the exculpatory clauses inserted by the railroads in their contracts and exempt circulars since 1980. Appendix A lists 14 liability limitations found in many railroad circulars applying on exempt traffic which unlawfully relieve the railroads of liability for transit losses. These exculpatory clauses and limits on liability have enabled railroads to reduce their claim payments by 50% at the expense of the nation's shippers.

With respect to the airline industry's claim payment policies, it has reduced its claims ratio from .65 to .38 between 1977 and 1984. This result is largely attributable to the return to unconscionably low limits of liability such as $.50 per lb per piece lost or damaged. This low limit of liability originated with a pony express operation in 1861, and was held by the CAB to be unreasonable and unlawful in 1977, immediately prior to the deregulation of air freight rates and rules. The airlines also opted under deregulation to reject the liability standards prescribed by the CAB to replace their previous exculpatory terms. We estimate that airline deregulation is costing air freight shippers approximately $12 million in unrecoverable claim losses as a result.

CARRIER LIABILITY DOES NOT REACT TO INCREASED COMPETITION

Management of these two carrier industries has proven by their reactions to deregulation that removal of federal constraints on carrier liability for loss, damage and delay of the public's goods is not in the public interest. The marketplace has not produced benefits for shippers in liability matters. The reasons are 1) Liability and claims are negative issues, and therefore are not generally used by carrier salesmen in competing for freight. Rates and service are the two competitive issues; 2) Claims occur after-the-fact. They are not anticipated by most traffic personnel during the carrier selection process. As a matter of fact, relatively few shippers are sophisticated in the law of carrier liability and therefore rely upon our historic federal statutes and I.C.C. regulations for just and reasonable loss and damage rules and claim policies.

To repeal these laws and regulations at this time leaving forwarders completley free to limit their liability at will, as the airlines and railroads have, will undoubtedly result in irreparable harm to users of freight forwarders. Since the great majority of freight forwarder services have traditionally been small shipment shippers, Congress should retain, in existing laws governing freight forwarders, those liability constraints designed to protect the public against carrier management attempts to evade liability.

The retention of liability laws and regulations for freight forwarders is essential due to the intermediary role played by forwarders vis-a-vis shippers and carriers. Claims for loss, damage or delay are filed by claimants against the forwarder, which then files a claim against the line-haul carriers. In most instances, the claimant is unaware of the identity of the carrier used by the forwarder, or even the mode of transportation used.

Therefore, the forwarder must be held accountable to the claimants under the laws governing common carriers.

They were deemed to be essential to the public interest when enacted. They are in the public interest today, and must be preserved to prevent unnecessary harm to small shippers and other users of freight forwarder services.

THE CARMACK AMENDMENT

At page 14 of the Staff Working Draft, Sec 11707(a) of Title 49 U.S.C. (commonly referred to as "The Carmack Amendment") would be amended by deleting all references to freight forwarders. This would have the disasterous effect of repealing many of the uniform liability rules which are necessary to an orderly, efficient transportation system.

For instance, Sec 11707 requires all common motor carriers (including freight forwarders) to:

1. Issue bills of ladings;
2. Be liable to shippers or receivers for the full actual loss suffered in transit;
3. Be jointly and severally liable with connecting carriers under a through bill of lading;
4. Issue bills of lading and delivery receipts on behalf of a freight forwarder performing transportation for that forwarder;
5. Limit its liability in accordance with Sec. 10730;
6. Be subject to suits in the judicial districts in which they operate a route;
7. Provide for a uniform, minimum time limit for the filing of claims and suits; and
8. Adhere to certain practices regarding disallowances of claims.

These provisions were enacted by Congress in the public interest beginning in 1906, and have been amended and improved over the past eighty years. Nothing has happened in the interim to suggest that these beneficial, reasonable guidelines for the disposition of claims for loss, damage or delay by carriers and forwarders are no longer needed to protect the public.

No evidence has been submitted to justify the singling-out of freight forwarders for special treatment by exempting them from liability standards while motor and rail carriers remain subject to the Carmack Amendment. On the contrary, since freight forwarders are intermediaries, there is a greater need for retaining statutory restraints on forwarders, liability. Without Sec 11707, shippers would be at the mercy of forwarders on cliam matters due to the lack of privity between shippers and the over-the-road or line-haul carrier used by the forwarder.

RELEASED RATES

At page 7 of the Staff Working Draft, 49 U.S.C. 10730(a) is amended by deleting Subchapter IV from the statute which requires released rate applications to be filed with the I.C.C. by freight forwarders. This section formerly required I.C.C. approval for released rates to be offered by freight forwarders as an alternative to full value rates.

Released rates options are, of course, desirable and are in the public interest whne they meet the standards set forth by the U.S. SUPREME COURT in *Adams Express* v. *Croninger*, 226 U.S. 491, which held that carriers may, "by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates or charges proprtioned to the amount of the risk . . ."

Two problems are created by the proposed amendment:

1. No provision is made for released rates by freight forwarders such as are provided for motor carriers in sub-section (b)(1) of this Section; and

2. The public will lose its only forum for complaints regarding the reasonableness and lawfulness of released rates. Shippers will be unable to prevent unlawful limitations of liability from becoming effective before shipping. "Automatic releases", for instance, such as have been held to be unlawful by the I.C.C. in Ex Parte No. MC-98 (Sub 2) Released Rate-Small Shipments Tariff, 361 I.C.C. 404, 415-417, and Transconex, Inc.-General Commodities, Rel. Rate Decision No. FF-305, Oct. 21, 1982, would be permissable if we do not retain some federal regulatory or statutory restraints.

The differential between a full value rate and a limited liability rate, for instance, could be set wholly by the forwarder. Our experience with railroads operating under an exemption clearly reveals that such differentials are set at high levels to discourage shippers from electing to ship under the full liability coverage. This practice was cited by the I.C.C. in its landmark decision in Ex Parte 265, 340 I.C.C. 515 (1972), at 521 as follows:

"Following the Croninger case and other similar court decisions, many railroads began to publish reduced rates based on agreed values and prohibitively high rates based on actual values of commodities shipped. The net result of this was that shippers had no effective choice of rates and were denied full and fair recovery for shipments lost or damaged in transit." As an illustration of this carrier management philosophy, we refer the Committee to the exempt piggyback and boxcar circulars which impose a premium on shippers electing to ship under "Sec 11707 liability". The Union Pacific Railroad, for instance, charges a 25% premium on such traffic moving in boxcars. (U.P. Circular No. 20, Item 260)

With respect to railroad traffic, Congress recognized that The Carmack Amendment is desirable and therefore, passed the "Matsui Amendment" to the Staggers Act of 1980, retaining statutory restraints on railroads' liability for loss, damage and delay of shippers' goods. (See 49 U.S.C. 10505(e) reproduced as part of Appendix A herein)

The same treatment is warranted for freight forwarders if the industry is to be deregulated.

DEDUCTIBLES

In addition, the Council wishes to take this opportunity to urge the Committee to rectify the I.C.C.'s wrongful interpretation of its modification of 49 U.S.C. 10730(a) relating to released rates for freight forwarders. This section permits the I.C.C. to authorize released rates which limit forwarders' liability to a stated amount agreed to by the shipper.

The I.C.C., however, has interpreted this section as also permitting deductibles to be made a part of such released rate agreements. (I.C.C. Dkt. No. 38752). The Committee will recall that deductibles were specifically allowed in Subsection (c) of 49 U.S.C. 10730 in the Staggers Act of 1980, but only for rail carriers. This statutory windfall was granted to a financially ailing railroad industry without advance notice to the public, hearings or a fair opportunity for the shipping public to express its opposition to this unlawful, revolutionary change in a bailment contract. For a complete review of this controversy, see Appendix C herein and the 2nd Circuit Court's decision in *S.N.F.C.C. et al.* v. *I.C.C.*, 712 F. 2d 740 (2nd Cir. 1983), cert, den. 104 S.Ct. 3534 (1984).

The I.C.C.'s extension of Congressional intent to grant freight forwarders the right to include deductibles in their released rate offerings violates every rule of statutory construction imbedded in our laws. If Congress had intended to permit modes of carrage other than the railroads to have the same privilege, it could have

readily done so by amending subsections (a) and (b) of Sec. 10730 in 1980 when they were being revised in connection with the Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980.

Obviously Congress believed that deductibles would be a dangerous experiment in industries where employees physically handle the shippers' goods in the course of loading, transferring, storing and unloading those goods. The temptation of pilfering a shipment for amounts valued at less than the deductible would be too great to resist, in many cases, particularly when it would be generally known from the bill of lading and tariffs that no claim would be filed for shortages for less than the deductible, and thus, no investigation would be conducted.

The Committee is urged to correct this wrongful interpretation of the law, and to provide that deductibles may not be made a part of released rate offerings by freight forwarders, motor carriers or household goods carriers. If Congress does not act in this matter, and carriers begin to introduce deductibles into their released rate offerings, it will very likely lead to widespread pilferage and thievery on small shipments. Once this practice becomes entrenched in our distribution system. it will be difficult to eradicate.

Of greater significance, however, is the dangerous precedent which the I.C.C. has created, and which must be addressed by Congress. The Commission, in effect, has held that, notwithstanding the fact that Congress grants a special privilege to one mode, in a sub-section of the U.S. Code which governs only that mode, the Commission may extend that privilege to other modes.

A recent decision of the U.S. Court of Appeals for the District of Columbia, in effect, held the Commission guilty of a similar violation of Congressional intent. In *Cross-Sound Ferry Services, Inc.* v. *I.C.C.*, 738 F. 2d 481, the Court of Appeals held that the I.C.C. improperly applied the standard of "representational points" in a water carrier application, a standard which is prescribed in Sec. 10922(e)(1)(C) for motor carriers, but which is not prescribed for water carriers in Sec. 10922(f). (See Footnote 2 in decision) This unlawful extension of the law to other modes is analogous to the I.C.C.'s decision to permit all surface carriers to use deductibles although only subsection (c) of Section 10730 permits their use for railroads.

Similar gratuitous extensions of Congressional intent for one mode to other modes by the I.C.C. could undoubtedly be gleaned from the Commission's recent decisions. The point is that only Congress may change the law, and when the Commission is guilty of violating Congressional intent, Congress must take remedial action forthwith.

With respect to deductibles, the public interest clearly calls for an amendment to Sec. 10730 of 49 U.S.C. to provide that:

"Deductibles may not be incorporated in agreements between shippers and households goods carriers, motor carriers or freight forwarders."

We will reserve our right to address the propriety of permitting railroads to incorporate deductibles in their rate structures in Oversight Hearings on the Staggers Rail Act when they are next scheduled.

INSURANCE AND STATUTORY AGENTS

The Council endorses that draft bill's retention of the existing statutory requirement for freight forwarders' filing of a bond or insurance policy for the loss or damage of freight transported. (Page 10 of Staff Working Draft, Section 10927). The existing statutory requirement and the I.C.C.'s regulations promulgated pursuant thereto, have saved the shipping public millions of dollars of unrecoverable losses annually, and must be preserved.

We note, however, an apparent void in the existing laws in that freight forwarders are not required to designate an agent for the service of process in each state in which they operate.

Apparently freight forwarders were not included in 49 U.S.C. 10330 on the assumption that forwarders do not conduct over-the-road operations and therefore would not be sued in the various states in which accidents could occur. This assumption overlooks the fact that freight forwarders may be sued on loss and damage or over charge and duplicate payment claims. As these suits can arise in any state in which the plaintiff resides and in which the forwarder operates, it is necessary that forwarders designate an agent on whom service of process can be readily made. This statutory and regulatory requirement is of great value to the public particularly in those instances where a claim is nearing the expiration of the statute of limitations and the forwarder does not maintain an office or terminal in the plaintiff's state.

We therefore urge that 49 U.S.C. 10330 be amended to include freight forwarders.

FREIGHT CHARGE DISPUTES

With respect to overcharges, undercharges and other freight charge disputes, the Council endorses retention of the current statutory time limits which have worked well and should be retained. It gives all parties to the transportation contract a standard measure of time within which to have their freight bills audited for errors, to file claims and to institute suits in the event of a controversy. It also carriers and forwarders the same amount of time within which they must institute suits for the collection of freight charges and undercharges.

In the absence of a federal standard, each forwarder would be free to set its own time limitations, thus causing an administrative nightmare for claimants, as presently exists on air freight and railroad claims. To illustrate, the Union Pacific Railroad reduced its overcharge time limits on exempt boxcar traffic effective January 1, 1984, from 3 years to 9 months. This unilateral reduction raised such a furor among shippers that the UP rescinded this change, and reduced the time limit to two years. However, the UP announced that it intends to reduce it further to one year at the end of 1985. The I.C.C. is currently investigating this matter on complaint of numerous shippers in Ex Parte 346 (Sub-No. 8), Exemption from Regulation—Boxcar Traffic.

Shipper interests are urging the I.C.C. to rescind its exemption orders for all rail traffic insofar as it relates to 49 U.S.C. 11706. Congress should anticipate a similar reaction from shippers if Sec. 11706 is repealed for freight forwarders or the I.C.C. is given exemption powers with respect to time limits on freight charge disputes with forwarders.

AMENDMENTS REQUESTED

In consideration of the importance of statutory and administrative regulation of common carriers, including forwarders, with respect to their liability to the shipping public for loss, damage and delay of goods entrusted to their care, the Council respectfully urges passage of the following statutory provisions in the event current freight forwarder regulation is in fact modified:

1. Retain 49 U.S.C. 11707 in toto;
2. Retain 49 U.S.C. 10730 and add subsection (d):

"(d) Freight forwarders may, be a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage, to an agreed value made for the purpose of obtaining the lower of two or more rates or charges proportioned to the amount of the risks in transit. Such limitations may not provide for specific amounts to be deducted from any claim or for automatic releases."

3. Retain 49 U.S.C. 11706;
4. Retain 49 U.S.C. 10927; and
5. Extend the provisions of 49 U.S.C. 10330 to freight forwarders.

APPENDIX A

EXAMPLES OF UNLAWFUL LIMITATIONS OF LIABILITY FOUND IN EXEMPT CIRCULARS ISSUED BY RAILROADS OPERATING AS COMMON CARRIERS WHICH ARE NOT ALTERNATIVES TO SEC. 11707 (CARMACK AMENDMENT)

1. Shifting the burden of proving negligence to the claimant.
2. Imposing the tort law rules of contributory or comparative negligence in breach of contract situations.
3. Denying liability for special or consequential damages.
4. Requiring shippers to present proof of unauthorized entry as a prerequisite for liability for shortages.
5. Requiring shippers to load in accordance with AAR loading rules as a prerequisite for liability (regardless of how the railroad handled the car in transit).
6. Requiring immediate notice of damage, or seal breach, as a prerequisite for liability.
7. Introducing new exceptions to railroad liability such as derailments, acts beyond carrier's control, mechanical breakdowns, etc.
8. Attempting to evade liability as common carriers by stating that the railroad's legal status is that of a contract carrier (a "Hirer only") not subject to the common law.
9. Refusing to allow the rejection or abandonment of damaged freight.
10. Limiting liability to certain values per lb. without offering a choice of rates printed in a tariff or circular, or offering premium rates for full value which are not proportioned to the risks of transit.

11. Attempting to deny responsibility for losses due to market declines and product deterioration caused by delays in transit.
12. Defining "reasonable dispatch" as the normal schedule plus 24 hours, and plus an additional 24 hours on holidays.
13. Requiring shippers to adhere to the packaging requirements in U.F.C. as a prerequisite to liability (regardless of how the railroad handled the car in transit).
14. Stipulating that a claim shall not be considered to have been filed until all the documents are submitted, and the full amount of the claim is determined. (No claims for $100 more or less, notice of intent to file a claim, etc.)

EXAMPLES OF LIABILITY PROVISIONS IN SEC. 11707 (CARMACK AMENDMENT) FOR WHICH THE RAILROADS MAY OFFER "ALTERNATIVE TERMS" IN EXEMPT CIRCULARS PURSUANT TO 49 U.S.C. 10505(E) [1]

The Carmack Amendment:
1. Requires the issuance of a Bill of lading, and imposes Sec. 11707 liability if none issued.
2. Imposes liability on the origin carrier, the delivering carrier or the carrier on whose line the loss occurred.
3. Imposes Joint & Several liability on all interline carriers.
4. Establishes common carrier liability for "full actual loss".
5. Permits released rates without prior ICC approval. (Sec. 10730)
6. Allows deductibles to be included in released rates.
7. Limits the places where a railroad may be sued.
8. Establishes minimum permissable time limits on claims & suits.
9. Defines the term "disallowance".

Senator PACKWOOD. Thank you.

Mr. Karel, in your testimony you noted the importance of freight forwarders to the small shipper. It is well-known to all of us in the abstract, but does NASSTRAC have any statistics on the magnitude of small shipments traffic handled by freight forwarders?

Mr. KAREL. We do not have a survey since about 4 years ago when motor deregulation was taking place when everybody was looking at that. At that time we had a number of shippers who used freight forwarders to a majority of the points that they served for their customers.

Senator PACKWOOD. OK. I wanted to get that before I heard Mr. Sender.

Mr. Sender, will you go ahead now, please?

Mr. SENDER. Thank you, Mr. Chairman. I am appearing here today on behalf of the National Industrial Transportation League, and serve as that organization's elected treasurer.

The league is pleased to be here this morning to present the shipping community's views on the deregulation of the surface freight forwarder industry. We believe that your hearing focuses much needed attention on the need to change the regulatory structure currently governing the freight forwarder industry.

The league has long supported reducing the Federal economic regulation of our national transportation system to the minimum consistent with the public interest. In helping to secure enactment of the Staggers Rail Act, the 1980 Motor Carrier Act, and the 1984 Shipping Act, the league has sought to let the marketplace resume its rightful role as the regulator of transportation services.

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[1] 11505(e) "No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11707 of this title Nothing in this subsection or section 11707 of this title shall prevent rail carriers from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title."

Where the marketplace has not been sufficiently strong to assume this role, our goals have been twofold: To foster competitive forces so that it can do so; and, to provide a balanced regulatory system until this former goal can be achieved.

Due to the changes made by these laws, we believe that now is an appropriate time to review the economic regulations governing freight forwarders to assure that this industry has the necessary tools to meet today's more competitive transportation marketplace.

The league supports the goals and objectives of your legislation—S. 1124, Surface Freight Forwarders Deregulation Act of 1985. They appear to be consistent with League policies on entry and antitrust immunity. However, since this legislation deals with highly technical aspects of the Interstate Commerce Act, we would ask an opportunity to make more detailed comments after our substantive committees have had an opportunity to review this measure.

The bill was referred to our committees on May 15, the day after its introduction, and we hope that their review can be completed within the next several weeks.

In closing, we believe that your bill represents a good beginning in the effort to eliminate unnecessary Federal economic regulation from the surface freight forwarded industry. We look forward to working with you and your staff to assure that the legislation meets our mutual goal of a market disciplined national freight transportation system.

We thank you for the opportunity to present the league's views.

Senator PACKWOOD. Thank you

Mr. Karel, in your testimony you expressed concern that the current cargo liability standard should be retained in order to protect shippers. Do you believe all of the current Interstate Commerce Act provisions in this area need to be retained?

Mr. KAREL. Yes, sir; I do.

Senator PACKWOOD. No exceptions? You are perfectly satisfied as it is and would not change it.

Mr. KAREL. I firmly believe in the Bill of Lading Act and the Carmack amendment.

Senator PACKWOOD. You also state in your testimony your support for the retention of the current statute of limitations allowing shippers 3 years with which to file for overcharges by freight forwarders and other carriers.

Is 3 years really necessary, or would some shorter time be sufficient? You know about overcharges relatively soon, don't you?

Mr. KAREL. I think the freight forwarder industry, more so than in most industries, have more very small shippers, and, regretfully, those companies are not as sophisticated as somewhat larger shippers or large corporations. The time for them to audit freight bills, both prior to shipment and after shipment, is limited because of their size.

I would hope that the Senate would do whatever it could to keep as much of the 3 years as possible for those small companies who need it in the freight forwarder industry.

Senator PACKWOOD. Mr. Sender, let me come back to you now. I am aware that some shippers believe that cargo liability requirements of current law need to be retained if the freight forwarders are going to be deregulated. And the bill, of course, retains limited

authority for the Interstate Commerce Commission to require freight forwarders to post a bond or other security to protect shippers.

Do you think that requirement is likely to be sufficient to address shipper concern about loss or damage claims?

Mr. SENDER. While it is not in the testimony, the league is examining that issue. We do have a policy, adopted by the members, which supports the establishment of uniform liability rules applicable to all modes of transportation, with allowances for an exemption negotiated between carriers and shippers and/or receivers.

To specifically answer your question, there seem to be some dispute in the testimony I heard this morning in answering that question. I really cannot add much more. I notice it is a may and not a shall on that provision of your bill. I think it would be useful for the committee to spell out its intent, and not leave it for later dispute before the ICC as to whether the insurance is to be required.

Mr. SWEENEY. Senator, I wonder if I could just clarify something you asked Mr. Karel about whether we want to leave everything in the act that is in there---

Senator PACKWOOD. As it is.

Mr. SWEENEY [continuing]. On the liability.

Senator PACKWOOD. Right.

Mr. SWEENEY. Section 10730 which is the so-called released rate section which allows a limitation of liability under the Act today delegates to the Interstate Commerce Commission a role there in subsection (a) to give a prior commitment to allow the released rates.

And what we are suggesting in our testimony is that there be a general provision allowing a freight forwarder to put in a released value rate where it is reasonable under the circumstances and not have to go to the ICC first. And that is similar to what the truckers have today; they have kind of a—they can first. They don't have to go to the ICC.

So we are not trying to reestablish the ICC in a bill that is trying to take them out of the picture. We are not trying to put them back in.

Senator PACKWOOD. I understand exactly.

Mr. Sender, it was not in your testimony either, but speaking on behalf of the league, can you tell me whether they favor deregulation of the other regulated transportation intermediaries—brokers?

Mr. SENDER. The League policies certainly, consistent with the treatment of freight forwarders, would favor lessening economic regulation of the other intermediaries. The shippers' agents are already deregulated. There is no regulation applicable to them. The shipper associations are similarly exempted. The brokers have limited regulation, but we would certainly favor reducing that as well.

Senator PACKWOOD. Mr. Augello, you advocate in your testimony that freight forwarders be required to designate an agent for the service of process in each State in which they operate. Why is that necessary?

Mr. AUGELLO. It is necessary to toll the statute of limitation when you have a claim and have to quickly serve that carrier. I believe perhaps that freight forwarders were not included in the

original motor carrier provision because it was believed that freight forwarders do not operate over-the-road equipment.

However, they do. And I think it is necessary for two purposes: one, to toll the statute for personal injury of death action, and the other for loss or damage claim.

Senator PACKWOOD. Why can't shippers continue to deal with freight forwarders at their place of business in person or by mail to settle claims?

Mr. AUGELLO. Well, because freight forwarders have authority to operate in 48 States. You might be in one State, and perhaps the freight forwarder does not have a physical place of doing business. It is as simple as that.

Senator PACKWOOD. All right, I have no more questions.

Mr. SWEENEY. Senator, could I ask you one question? You have been asking a question about in addition to deregulating the freight forwarders, deregulating some collateral transportation.

Now, I do not think that is in the bill, but is the concept behind that if a freight forwarder used a trucker, that the trucker would be deregulated? Is that the idea?

Senator PACKWOOD. Well, we are going to get to further truck deregulation later this year—maybe. I am not sure. Frankly, it depends upon the attitude of some of the parties involved, including the administration. This bill does not presume that. My position on the subject of truck deregulation is relatively well-known, and I think we should continue moving on down the road.

But if I had to do it with only luke-warm support from everybody involved, and strong opposition from some people involved, I am not sure it is worth the candle at this stage.

Second, we are waiting for a report in July of this year, based upon our actions in the prior truck deregulation, and I am not going to move until we see that report.

Mr. SWEENEY. Well, our conferences will certainly support you when the time comes. Thank you.

Senator PACKWOOD. I have not kept my view on this under a bushel basket, and it is well-known. But if the administration said fine, but it was low on their priority list, and if the American Trucking Association said fine, but it was sort of low on their priority list, and it will have strong opposition from some others—and it is hardly an issue of great public concern—you cannot well up great storms of mail and indignation from the general public on the subject of truck deregulation or truck regulation.

So, consequently, if you are going to carry it through, you have got to have some fair degree of support from the parties that are directly involved. And if we have that, we will go ahead. If we don't, I will have to reassess it and see.

Mr. KAREL. Senator, from an active shipper point of view, we need it.

Senator PACKWOOD. Well, the shippers have been sensational. I cannot think of any shippers that have complained about the truck deregulation to date that we have had—and I know the argument was initially made, and some worry about the small towns. You know, if you don't compel the carriers to serve the small towns, since they do it out of the goodness of their hearts for the benefit of

the small towns, they would leave the small towns immediately if they could.

Well, indeed they can for all practical purposes now, and most of the people I talk with in small towns, whether they are pharmacists or hardware store owners, are finding that they have adequate service and maybe a little better alternatives than they used to have, and they are perfectly happy with what they have.

So that just did not come to pass. And I am prepared to go ahead, but I am not prepared to shoulder this burden all by myself without some support, some significant lobbying support from some of the groups who stand to benefit from it.

Mr. SWEENEY. I might add, Senator, that the only real issue left that we see in trucking deregulation today, is the rate bureau issue. We are now here in the middle of May, and on April 1 the trucking rate bureaus put in a whole round of general increases.

Yesterday on my desk, I received in the mail a new round of general increase proposals. So we have two general increases in less than 6 months by the rate bureaus.

Senator PACKWOOD. You know my views about the rate bureaus, also. The argument that somehow the rate bureaus are the saviors of the public and keep the prices down, and the public would otherwise be gouged out of existence just seems to me to be belied by the history of what happens.

You know, I don't know; there may be a town someplace that is served by a monopoly trucker and nobody else comes to that town. I have yet to run across that town. There are some situations with railroads where they are the only railroad in town.

But at least in the small towns in Oregon, I don't know of a hardware store that does not think it has some options as to how it wants to ship and with whom it wants to ship, and the owner is reasonably intelligent enough to shop around for prices and service. And it has worked.

Thank you very much, fellas.

Now if we might conclude with Mr. Calvin Stein and Mr. Alvin Wohlstetter.

Mr. Stein, do you want to go first?

STATEMENTS OF CALVIN W. STEIN, PRESIDENT, HOUSEHOLD GOODS FORWARDERS ASSOCIATION OF AMERICA, INC.; AND ALAN F. WOHLSTETTER, EXECUTIVE SECRETARY, HOUSEHOLD GOODS FORWARDERS TARIFF BUREAU

Mr. STEIN. Mr. Chairman, if I may, my name is Calvin Stein. I am accompanied by the the Association's general counsel, Alan Wohlstetter. If there are any questions of a legal nature I will defer to Mr. Wohlstetter if I may.

I am the president of the Household Goods Forwarders Association of America, Inc., which is a nonprofit organization whose membership consists of 81 specialized freight forwarders of household goods, unaccompanied baggage, and used automobiles (hereinafter referred to as "household goods forwarders").

On behalf of the Forwarders Association, I requested the opportunity to testify before the subcommittee with regard to the Surface Freight Forwarder Deregulation Act of 1985 for the purpose of

presenting the reasons why Congress should continue Interstate Commerce Commission regulation over household goods forwarders.

The proposed Surface Freight Forwarder Deregulation Act of 1985, if enacted, would adversely impact on household goods forwarders to a considerable extent by placing them at a competitive disadvantage vis a vis household goods motor carriers and brokers of household goods who would continue in a regulated status, for the following reasons:

One, households goods forwarders are a separate and distinct class of freight forwarders, recognized by the Interstate Commerce Commission, in the issuance of specialized permits, the monitoring of fitness, and the ability and the oversight of consumer interests. Households goods forwarders differ from general commodities forwarders in the commodities they forward, the market in which they compete, and the underlying carriers they use.

Specifically, household goods forwarders forward used household goods, automobiles and unaccompanied baggage of individuals. They compete for this business with regulated motor carriers and regulated brokers of household goods, and they must use the service of the same regulated household goods motor carriers with which they compete for underlying transportation.

In contrast, several general commodities forwarders forward general freight, they compete with brokers of general commodities and shippers' agents who are basically unregulated and they use primarily TOFC rail service, for instance piggyback, for underlying transportation which itself is unregulated.

In sum, the differences from a public interest standpoint between the transportation of household goods and the transportation of general commodities are the same as those recognized by Congress in the Household Goods Transportation Act of 1980, where it enacted specific provisions for the class of household goods motor carriers, and in the Motor Carrier Act of 1980, where Congress retained a strict entry standard for brokers of household goods, while virtually deregulating brokers of general commodities, and where Congress continued Interstate Commerce Commission jurisdiction over released rates which limit liability based on value for household goods, both for freight forwarders and motor carriers, while deregulating released rates of motor carriers of other types of property.

The question of deregulation of all household goods carriers is not with the committee, and I am not presumptive enough to address that issue.

Our position is that so long as there is continued regulation of motor carriers and brokers of household goods, it is in the public interest and the interests of the household goods forwarder industry that household goods forwarders continue to be regulated.

Although deregulation may normally be an advantage to a carrier, the selective deregulation of one segment of the household goods market, for instance, the household goods forwarders, while continuing the regulation of household goods motor carriers and brokers, will upset the present competitive balance and will undermine the competitive position of household goods forwarders.

As shown below, the likely result will be a reduction rather than an increase in competition.

Two, deregulation would jeopardize the continued participation of household goods forwarders in the military personal property program for the transportation of domestic shipments because the military has an established policy of using only regulated carriers for household goods transportation. Prior to regulation of freight forwarders of household goods, the military excluded these forwarders from participation in domestic transportation of household goods, which exclusion remained in effect until these forwarders were licensed by a permit issued by the Interstate Commerce Commission.

Presently the military does not permit any company to participate in its domestic or international household goods program unless it is licensed by the Commission as a motor carrier freight forwarder of household goods.

Furthermore, if the military did continue freight forwarders in this domestic program, the likely result of elimination of Commission regulation would be the promulgation of new regulations by the military. It makes little sense to substitute one form of regulation for another, particularly when our industry believes Commission regulations essential to its competitive growth. Military regulation would not fulfill this need.

In any event, if household goods forwarders are deregulated and the military policy remains in effect, the result will be a reduction in competition for military traffic.

In addition to service for the military, the selective deregulation of household goods forwarders will undermine their ability to compete for the traffic of other government agencies, national accounts, and C.O.D. shippers. Service is the primary consideration of all shippers of household goods, and the attitude of the shipping public today is that they are best protected in shipping household goods through the use of regulated carriers and forwarders.

Given the alternative to using an unregulated household goods forwarder or regulated motor carrier or broker, the regulated entity would be selected.

This is a matter of utmost concern to household goods forwarders in all areas of the market, but it is a most serious consideration in our industry's desire to become more effective competitors for national account and c.o.d. business, which today is controlled by motor carriers and brokers. While it is possible that deregulated household goods forwarder affiliates of major van lines might be able to penetrate the national account and c.o.d. market, deregulation will effectively eliminate the smaller independent forwarders, many of whom are members of the HHGFAA, from ever being effective competitors for this traffic.

Three, further, adverse impact on the competitive position of household goods forwarders will derive from their status as both competitors and users of regulated household goods motor carrier service. Enactment of sections 6 and 7 of the proposed bill will eliminate all prohibitions against motor carrier discriminaton in rates and service against freight forwarders.

The effect of elimination of the present prohibitions against discrimination will be to impede the motor carrier service available to

the household goods forwarder industry by undercutting the motor carriers' common carrier obligation to serve all forwarders on an equal basis, which has been a fundamental tenet of transportation regulation in furtherance of the national transportation policy. The importance of this statutory prohibition in the household goods transportation industry is underscored by the fact that many household goods motor carriers have household goods freight forwarder subsidiaries which they would treat more favorably than an independent competitive freight forwarder if it were not for this statutory inhibition.

I submit that the detrimental results from deregulation of household goods forwarders run counter to the objectives of the national transportation policy, 49 U.S.C. section 10101, which states that it is the policy of the United States to regulate the various modes of transportation so as, inter alia:

(A) To recognize and preserve the inherent advantages of each mode of transportation;

(B) To promote * * * adequate, economical, and effective transportation;

(C) To encourage sound economic conditions in transportation, including sound economic conditions among carriers; [and]

(D) To encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices * * *

In sum, I submit that the selective deregulation of household goods forwarders, while continuing regulation of household goods motor carriers and brokers, will place the household goods forwarders at a material competitive disadvantage. The HHGFAA does not want to oppose the deregulation of forwarders of general commodities if the bill can be amended to continue regulation of household goods forwarders. During the last session of Congress, we submitted to the staff of the House Surface Transportation Subcommittee for consideration by the House of Representatives, proposed amendments to Senate Bill 2974, which similarly provided for forwarder deregulation, but the session ended without action on the bill being taken by the House. We would welcome the opportunity to submit to this subcommittee proposed amendatory language to preserve the regulated status of household goods forwarders while granting the general commodities forwarders the relief they seek, should that be appropriate.

Mr. Chairman and members of the subcommittee, I want to state that I am most grateful for the opportunity to present these views on behalf of the household Goods Forwarders Association of America, Inc.

Mr. WOHLSTETTER. I would like to attempt to explain a little bit more why the household goods forwarders take the position they do, sort of in one corner of this hearing, because it seems a little incongruous to say I want to be regulated so that there can be the present competition by forwarders. It seems to be a little incongruous.

However, as I listened to the testimony of the other parties in the general category of freight forwarders—and they are very different than freight forwarders of household goods—the touchstone of the testimony seemed to be we can compete if we get regulatory equality.

And in their case, regulatory equality means deregulation. In the case of forwarders of household goods, regulatory equality at the present time means regulation, because not only are we at a disadvantage as Mr. Stein stated, if we solicit business of household goods which is such a specialized commodity, with possessions so important to every c.o.d. customer, but our competitors—and we had this in the past before we were regulated—where they would say we are a regulated company. If you have any problem, we are regulated by the Interstate Commerce Commission. They have consumer rules. You can avail yourselves of those.

If we become deregulated, and recognizing that these are basically small businesses that can't mount a monster advertising campaign, they have the problem of the uphill battle of saying although we will give you better service, and although our rates are not cheaper, they are certainly no more expensive, we are better even though we are unregulated. That is a hard sell, Mr. Chairman. It has not worked out in the past and I can assure you it is not going to work out in the future.

Senator PACKWOOD. You mean it is just psychologically a hard sell? It is not a question that you can't compete if you were unregulated and they were regulated; the public just won't believe that you are reliable?

Mr. WOHLSTETTER. It is a difficult thing to—if you have someone that has the regulatory trappings which are put in for the benefit of the consumer, the consumer rules, the tiedown on liability that has been talked about today, we find that there is a disadvantage on selling on the same basis.

Senator PACKWOOD. There would not be a disadvantage, however, in terms of mobility and quickness and ability to compete, would there?

Mr. WOHLSTETTER. There would in another way, not in the form of selling, but there would be in this way, and this relates to the Tariff Bureau. First of all, this Tariff Bureau has to be distinguished from the other bureau which Mr. Berman testified about. This was a bureau set up solely for the specialized household goods freight forwarders.

Now, we have to compete head-on with the increases and decreases which are promulgated by the regulated household goods industry who operate through their own bureau. If they put in a general rate increase, and they have fairly recently, it means that first of all, the bureau has to monitor it, and there are hundreds of pages that have to be changed in order for us to be able to charge a rate which is first competitive with the regulated industry, and second and most important, we have to immediately change our rates in order to be able to get the underlying service from the household goods carriers at the appropriate rate.

Senator PACKWOOD. Let me ask you a further question. Normally, business people come to me and complain about the heavy hand of Government regulation. They want out from under. And many times they say, I'd like nothing better than if I could be freed from the Government regulation and let me compete against a business that's regulated by Government. I can beat them if they are stuck with the bureaucratic overlay and all of the delays and time-consuming problems of dealing with them.

Why isn't that true with you?

Mr. WOHLSTETTER. The basic reason is that we are dependent in large measure for underlying transportation on the regulated household goods industry. And our costs are directly related to their tariff rates. For example, under 409 agreements, previously called 409 agreements which are provided for in the act, the charge by the household goods motor carriers is a percentage of their tariff rate. Let's say 80 percent of their tariff rate.

If their tariff rate changes through their rate bureau by a general rate increase, all of our members have to negotiate a rate based on that percentage and have to change their rate to the general public. They can't continue to offer the service at the same price if the rates have gone up.

And as we pointed out in our statement, domestically and internationally it would be absolutely—almost nothing is impossible—but almost impossible for every little freight forwarder to adjust its schedule of charges to react to an action of the rate bureaus.

Now, if the rate bureaus all go out, Mr. Chairman, and if the household goods industry is deregulated, then we can compete on that basis.

Senator PACKWOOD. Would you recommend the deregulation of the household goods carrier industry?

Mr. WOHLSTETTER. I am not the one that that question should be addressed to. I have no authority to state, and I think that the movers conference would be the best one to address that question to.

Senator PACKWOOD: I was thinking just on behalf of your organization, if they were deregulated, would you be perfectly happy to be deregulated?

Mr. WOHLSTETTER. If they were deregulated, there are problems which would have to be worked out, particularly the Department of Defense, as Mr. Stein had stated, but basically speaking our position here today is that you cannot saw off one leg of the table without making the whole table uneven. And we are such a part of the same table in the household goods industry that we do not know of any way that we can continue.

We feel for reasons that are put in here, that because of the protection we have against household goods carriers discriminating against forwarders, which I believe is in Mr. Stein's testimony, that by excluding—deregulating us right now and throwing out that protective provision, that the household goods carriers could then with impunity discriminate against the so-called small independent freight forwarder and in favor of their own affiliated freight forwarders and that would be the end of the freight forwarder industry.

[The statement follows:]

STATEMENT OF ALAN F. WOHLSTETTER ON BEHALF OF THE HOUSEHOLD GOODS FORWARDERS TARIFF BUREAU

Mr. Chairman and members of the subcommittee, my name is Alan F. Wohlstetter. I am Executive Secretary of the Household Goods Forwarders Tariff Bureau (HHGFTB), which is a rate bureau, operating pursuant, to Order of the Interstate Commerce Commission under 49 USC § 10706 (formerly section 5a of the Interstate Commerce Act). The HHGFTB's membership consists of specialized freight forward-

ers of household goods, unaccompanied baggage and used automobiles (hereinafter referred to as "household goods forwarders").

I am testifying here today because the selective deregulation of household goods freight forwarders, while motor carriers and brokers of household goods remain under regulation, will upset the competitive balance in the household goods transportation industry. My testimony is supplemental to that adduced by Calvin W. Stein on behalf of the Household Goods Freight Forwarder Association of America and deals with rate matters.

Under our I.C.C.-approved Agreement No. 106, members of the HHGFTB are presently authorized, with antitrust immunity, to collectively consider, discuss and vote upon the establishment of rates, rules, regulations and practices governing the transportation in frieght forwarder service of used household goods unaccompanied baggage and used automobiles, in interstate commerce, between all points in the United States.

There are presently 83 freight forwarder members of the HHGFTB, which participate in tariff published by the HHGFTB and filed with the Interstate Commerce Commission. As required by statute, each member retains the right to take independent action.

Since the inception of the HHGFTB in 1972, there have been 349 proposals docketed and acted upon following the Bureau's docket proposal procedures, including proposals for general rate increases covering line-haul transportation rates as well as increases in accessorial rates and charges; independent action requests by individual member forwarders; changes in tariff rules and regulations, and changes in tariff structuring.

The members of the HHGFTB need and want continuation of their collective rate bureau and tariff filing activity so long as this is available to, an engaged in, by regulated motor carriers of household goods with whom they directly compete, and upon whom they are dependent for underlying transportation. Due to this dual status as competitors and users of regulated underlying carriers, household goods forwarders are directly impacted by rate bureau actions of household goods motor carriers in two important respects. As competitors, they must be able to respond promptly to rate and tariff changes, and as purchasers of motor carrier transportation, they must be able to react quickly to reflect increased or decreased costs in their forwarder rates. This they have been able to do effectively and economically through the HHGFTB by authorized collective action.

Due to this necessarily intertwined relationship, the tariffs of the HHGFTB are structured in almost identical fashion, and at competitive rate levels, with the tariffs and tenders issued by the two approved motor carrier rate bureaus whose membership comprises the household motor carrier industry. Historically, when either of these rate bureaus published general rate increases, changes in tariff rules application or revision to accessorial charges, the HHGFTB has, for the benefit of its members, published appropriate amendments to its tariffs, following prescribed Section 5a procedures.

The regulated household goods motor carrier industry continues to have, through I.C.C. approved rate bureaus, the ability under 49 USC § 10706(b)(3)(D) to take collective action, with antitrust immunity, with respect to:

(i) General rate increases or decreases, subject to certain procedures;

(ii) Changes in tariff structures, subject to certain limitations;

(iii) The filing of independent actions for individual member carriers; and

(iv) Changes in tariff rules and regulations having substantially general application throughout the area in which they apply.

It is imperative that the household goods freight forwarder members of the HHGFTB retain this same ability to act collectively in order to reflect changes in the cost of underlying transporation and accessorial services, which directly impact their ability to compete price-wise with household goods motor carriers.

Unless Congress continues the Section 5a immunity permitting our members to take collective action on general rate adjustments and other tariff amendments, issued by the household goods motor carrier rate bureaus, as authorized by 49 USC § 10706(b)(3)(D), household goods freight forwarders would operate with a serious competivie disadvantage. The majority of the Bureaus' members are small businesses, with limited resources. Without the means of collectively responding to tariff changes themselves collectively established by the household goods motor carriers, with whom they directly compete and are dependent upon for underyling transportation, our members would individually have to maintain their own "in-house" monitoring systems, as procedure which the HHGFTB presently provides. Such individual and excessively duplicate effort and expense would neither be efficient nor economic, and would not result in the most expeditious method of ensuring that the

forwarders' rate structures remain competitive with those of motor carriers of household goods.

Although the proposed forwarder bill eliminates rate regulation by the Commission, it does not eliminate the need for each of our forwarder-members to maintain competitive tariffs in order to solicit and compete for business. A measure of the difficulty and the expense that would be incurred were each household goods forwarder required to react individually to general rate increases or rule changes issued by the household goods motor carrier bureaus can be gained from a consideration of the scope of the tariffs used in the household goods transportation industry. Because of the nature of the commodity, not only are there required to be published numerous rules governing the service, but due to the special elements of household goods moving, accessorial services have to be provided for, with charges varying throughout the country. For example, the basic tariff of the HHGFTB consists of 168 pages, involves 17 line haul rate sections, containing over 3,000 individual rates, and has 15 different schedules of accessorial charges on a city/county basis which results in over 15,000 separate rate applications. The overwhelming difficulty of individual response is self-evident.

Furthermore, the regulated freight forwarders have significantly contributed to the introduction and development of the door-to-door container method of transporting household goods, which is the primary method used to transport household goods between points throughout the United States, on the one hand, and points throughout the Free World, on the other. Under the door-to-door concept, the household goods shipment is loaded into a specially designed container at residence and placed under seal which is not broken until arrival at the new residence, thus limiting the possibility of pilferage and reducing damage through elimination of multiple handlings.

The door-to-door forwarder service involves a movement presently under I.C.C. tariffs, as well as pursuant to ocean tariffs regulated by the Federal Maritime Commission. Ocean rates are filed on a container basis or on a basis of weight or measurement, whichever produces the greater revenue to the ship. Because of the bulky nature of household goods, ocean charges are always on a measurement basis. As a result when a general rate increase or decrease is effected by the household goods motor carriers, it has to be considered in connection with the ocean charges then in effect, and only then can viable charges be established by the household goods freight forwarders to cover the services provided in the portion of the movement taking place within the United States. In this connection the HHGFTB has developed and published special import/export tariffs covering the performance of freight forwarder services throughout the United States. We frankly cannot see many individual forwarders having the ability and financial resources to consider and appropriately reflect the changes in the import/export tariffs required to maintain essentially viable and competitive service.

So long as forwarders of household goods must react promptly to rate changes made by regulated motor carriers of household goods through their approved rate bureaus, forwarders require the same ability to take collective rate action. We respectfully ask that this one facet of the household goods transportation industry not be deregulated thereby placing us at substantial competitive disadvantage with our regulated motor carrier competitors.

On the other hand we are aware that the general commodity forwarders principally compete with and use unregulated rail service and can therefore understand their desire to be deregulated. On that we take no position but for the reasons here stated ask that freight forwarders of household goods be excluded from the proposed legislation.

I appreciate the opportunity of testifying before the Subcommittee and sincerely trust that my testimony and that presented on behalf of the Household Goods Forwarders Association of America fully explains our need to continue to exist as a part of the regulated household goods transportation industry.

Senator PACKWOOD. Mr. Stein, let me ask you this. You think it is also necessary to continue your antitrust immunity for collective ratemaking?

Mr. STEIN. Mr. Chairman, the Forwarders Association does not get involved with antitrust. It is the Tariff Bureau. We have nothing to do with rates whatsoever, sir.

Mr. WOHLSTETTER. That is the only reason I am Executive Secretary of the Tariff Bureau, because it was determined that the Asso-

ciation should remain free of tariff bureaus. Historically, it was set up that way.

We certainly need it, and speaking for the bureau to a member. So long as the household goods motor carrier industry with whom we directly compete have it, we would be at a tremendous disadvantage, because as you recognize, if you say it doesn't help the shippers, I think that the answer to the Tariff Bureau, it must help the carriers. I think that is your view.

And if it helps the motor carriers, then I am saying, by definition, we are at a competitive disadvantage if we don't have it to help us.

Senator PACKWOOD. Well, you know, interestingly, when we partially deregulated the trucking industry, it was over the objections of the carriers. They didn't like it. The shippers all along had supported it and pushed it, thought they would benefit from it, and in retrospect what they thought has turned out to be true. Most shippers like deregulation.

When it came to the household goods industry, we left it regulated because we thought that the average householder was in a slightly different position than the average business person. That presumption may or may not be right or wrong, but that's what we thought, so we left it more regulated.

And I suppose the question comes as to whether or not that conclusion was correct, and that is something we may visit on another occasion. And all you are saying is you want a level playing field, and you will play on whatever the field is, so long as everybody plays on the same field.

Mr. WOHLSTETTER. That is right, Mr. Chairman. I think at that time, Mr. Chairman, the matter could be addressed, as it was addressed in 1980, as a single type of very specialized service, as the Commission has treated it. And with due respect to the Chairman of the Commission—and I overlooked the fact—I should have gone down and told him of our interest. I did not. But when he is under the impression that the freight forwarders of household goods are operating under an exemption, really our people are not—the people who are really handling the household goods as freight forwarders are all operating with the help and the benefit of the license that we got from the Interstate Commerce Commission, and we treasure it and need it.

Senator PACKWOOD. All right. I don't think I have any more questions. Gentlemen, thank you very much.

We are adjourned.

[Whereupon, at 11:04 a.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF TIMOTHY H. LEE, VICE-PRESIDENT OF SUPERIOR TRANSPORTATION SYSTEMS, INC. OF WILSONVILLE, AND CHAIRMAN OF THE LIAISON COMMITTEE OF THE TRANSPORTATION BROKERS CONFERENCE OF AMERICA, INC.

My name is Tim Lee and I am the Vice President Of Superior Transportation Systems, Inc., and the Chairman of the Liaison Committee of the Transportation Brokers Conference of America, Inc.

IDENTITY AND QUALIFICATIONS

I am the Vice President of Superior Transportation Systems, Inc., (herein STS) which is one of the nation's leading transportation brokerage companies, specializing in services and innovations that benefit trucking as an industry as well as the shippers and consumers who rely on this, our nation's largest transportation segment. I am also Chairman of the Liaison Committee of the TBCA which is the trade association of transportation brokers. STS is one of the more aggressive of the new transportation brokerage companies which were founded in the wake of the Motor Carrier Act of 1980. In fact, the application filed by STS' affiliated motor carrier, Shipper Freight Services, Inc., in 1980 for contract carriage authority to serve STS (ICC MC No. 152609-Sub-5) became the landmark decision that confirmed what Congress intended the definition of a shipper and the proper role of a broker to be.

Our business has grown from less than $.75 million in our first year when we started the company in 1980, to a gross of over $20 million for Fiscal Year 1984. Over the last three years, STS has paid over $150,000 in state and federal income tax, and has been responsible for the payment of $300,000 in highway and fuel use tax in our home state of Oregon alone. In addition to providing income for over 80 contract carriers, STS employs over 50 full-time, permanent employees.

In addition to our regular routing of TOFC, rail and LTL traffic, STS currently routes over 1,500 truckloads of freight on a monthly basis. Under federal deregulation, as a brokerage, we have been able to develop new systems to serve smaller communities by providing shipment consolidation and enabling truckers to make multiple stops to communities along their routes without bringing their shipments to a central distribution point for re-distribution. This has enabled us to provide more expeditious, more reliable service, at a lower cost to smaller communities.

REASONS FOR SUPPORTING THE DEREGULATION FOR FREIGHT FORWARDING

I am not an expert on Freight Forwarding, but I am an expert on what deregulation can do for an entreprenurious company, and for the shipping public.

When my partner, Bill Kirkpatrick, and I started into brokerage in 1980, we started from scratch. We had experience in transportation, but we did not have a fleet of vehicles, nor did we have a long list of customers, but what we did have was the ability to go out, and through our own entreprenurial skills, attempt to provide cargo carrying service for shippers, and cargo aggregating services for carriers, which would allow us to give shippers the best service they could get and to give carriers traffic that would pay compensatory rates. Since that time, our growth has been spectacular.

I am not saying this to brag about the success of this company, but I want to make it clear that the reason that we have been successful was that the relaxed rules as to entry into brokerage, and then the relaxed rules as to how a broker could operate made it possible for us to have such expansion.

Prior to the passage of the Motor Carrier Act of 1980, I doubt very much that our companies could have expanded and could have carved out the niche in the marketplace that we have now been able to achieve. When we set up our affiliated motor carrier, we realized that this would not have been permitted before the passage of the Act, and although it took a considerable amount of time to push this one through the Commission, when we obtained that authority we were in an excellent

position to provide the type of innovative service that the Act contemplated and encouraged.

Today, STS serves 48 states from its Oregon base. Although we do not own or operate a single truck ourselves, in addition to our regular rail. TOFC and LTL traffic, our firm routinely handles over 1,500 TLs of freight per month. We are, in every sense of the word, a "transportation company". We went into this business because we saw resources in the marketplace that were not being used or used efficiently. We share the philosophy of the Motor Carrier Act, that excess capacity, unreasonable barriers to competition and inflexible rules do not benefit consumers or the economy. The flexibility and liberation contained in the MCRA made it possible for a brokerage company such as ours to take advantage of that philosophy and be a true innovator.

The consensus among our customers is that implementation of the MCRA has resulted in:

I. Greater competiton in the marketplace, especially in the area of long hauls that have resulted in increased market share;

II. Greater flexibility and service alternatives;

III. Services that are better tailored to specific needs of customers;

IV. Increased availability of motor carrier equipment; and

V. A substantial increase in the overall use of motor carriers.

One of our major customers, the James River Corporation of Richmond, Virginia, a member of Fortune's 500, indicated that "the passage of the motor carrier reform act provided opportunities to expand markets substantially to previously unattainable areas and customers."

The MCRA has contributed to our capability of maintaining a competitive edge in a very competitive marketplace.

We thus feel that the deregulation period has enabled us to provide a quality service to shippers and carriers, a service that we could not have provided under the old motor carriers regulations.

I therefore feel that as Vice President, of my own company, and as Chairman of the Liaison Committee of the TBCA, that we should wholeheartedly support a bill that would free the freight forwarder industry from the same type of cumbersome regulations with which brokers previously had to cope. We are willing to compete on an equal basis with Freight Forwarders. We do not fear that removing restraints or restricitons from them will allow them to take business from us. We believe that we can provide a service that is geared to our customers' best interests, and we are sure that based on our experience in this company that if the freight forwarding industry is given relief from regulation that it will be able to maintain and perhaps expand its role in American transportation.

I have been concentrating to a certain extent on my own company, but I am speaking for the TBCA, which is whole-heartedly in favor of this bill to deregulate the freight forwarding industry. I have used my company as an example, but those goals which we have been able to achieve are symptomatic of the great strides that brokerage itself has been able to achieve since the relaxation of regulation. In 1978, there were less than 25 licensed brokers who were active in this county. In 1984 there are more than 4,000 licensed brokers. In 1978, the brokerage industry controlled less than $250,000,000 worth of transportation revenue. In 1985, the brokerage industry participates in more than $4 billion dollars of motor carrier transportation revenue.

Further, the brokerage industry has reached out to form new concepts in transportation. It has organized a shipper organization on international traffic, and has set up computerized load matching systems on domestic traffic. Brokers co-broker with each other throughout the country and serve as a matchless source for obtaining backhaul traffic for carriers that have been newly certificated by the Commission.

Many of us think that the problems and dislocations that might have grown out of the change in regulation have been significantly lessened by the presence of the brokerage industry in transportation. Brokers have been able to obtain traffic for carriers where the carriers previously could not obtain traffic, and thus the great growth in the carriers operating authority has been supported by the greater ability by brokers to utilize that authority.

It is for that reason that the TBCA supports this legislation. We understand that there will be some type of identification as to who will be forwarders, and that there will be a bond requirement. Both of those procedures now apply to brokers and we have found that they have had no ill-effect on our industry and we would suggest that if a similar type of authorization for a forwarder was incorporated into the bill, that based on our experience this would not be onerous.

But, first and foremost what I want to convey to this Committee, is that the opinion of this company and in the opinion of the conference which I represent, that deregulation works. It has put the entire force back into American transportation. We would be most ungrateful if we opposed any legislation that would extend to another transportation specialty the same relief from burdensome regulations. It is because of the experience that we have had in the deregulated segment that we can support in total the elimination of regulation as to freight forwarding. I would note that brokerage has been a great source of transportation service for both small carriers, small shippers and small communities. I think based on our experience, that if freight forwarding is freed from the same burdensome regulations that it also could provide a significant service to these three segments of transportation that need help.

On behalf of the 850 members of the TBCA that are located throughout the country and on behalf of my own company, I urge the Congress to adopt this legislation.

SEARS, ROEBUCK AND CO.,
CORPORATE GOVERNMENTAL AFFAIRS, SEARS HOUSE,
Washington, DC, May 15, 1985.

Hon. BOB PACKWOOD,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD:

Sears supports S. 1124, the Surface Freight Forwarder De-Regulation Act of 1985, which you introduced on May 14, 1985.

Sears has long supported the reduction of government regulation of transportation. We believe that marketplace competition in transportation best serves the consumer welfare.

The Staggers Rail, Motor Carrier, and Household Goods Transportation Acts of 1980, and the Bus Regulatory Reform Act of 1982, reduced regulation of most areas of surface transportation.

Freight forwarders which were the last of the surface freight industries to be regulated in 1942, are now the last to receive much needed de-regulation.

We endorse your effort, and offer our strong support for S. 1124, to de-regulate surface freight forwarders.

Sincerely,

RANDOLF H. AIRES,
Vice President.

STATEMENT OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Chairman Packwood and members of the Subcommittee, I am William S. Busker, Vice President of Legal Affairs and General Counsel of the American Trucking Associations, Inc. (ATA). I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its affiliated trucking associations located in every state and the District of Columbia, as well as through its individual motor carrier members, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt. ATA submits the following comments:

IMPACT ON MOTOR CARRIER REGULATION

Section 6(1) of S. 1124 by its terms appears to totally deregulate motor carrier transportation performed on behalf of freight forwarders. Section 6(1) revises Section 10521 of the Interstate Commerce Act, which sets forth the Interstate Commerce Commission's general jurisdiction over motor carrier transportation. The proposed amendment would except from the ICC jurisdiction the procurement of motor carrier transportation by freight forwarders. The exception would allow freight forwarders to procure transportation from unregulated carriers and would eliminate ICC jurisdiction even when such transportation is procured from a regulated carrier.

These provisions would create a system whereby motor carriage performed for freight forwarders would be exempt from regulation while that performed for other shippers would remain regulated. This would further exacerbate the current situation and would make more difficult the provision of nondiscriminatory, nonpreferential service to all shippers. Moreover, shippers, carriers or other transportation intermediaries, would be able to effectively remove themselves from ICC regulation.

They could declare themselves freight forwarders for the purpose of the shipment(s) in question and, thus, deregulate the surface transportation service.

The total deregulation of freight forwarders can be achieved by S. 1124 without Section 6(1), and without affecting the underlying transportation.

FREIGHT FORWARDER CONTRACTS

The statute currently provides in Section 10766(b) that a freight forwarder may contract with a motor common carrier or contract carrier. This contract may govern the services, instrumentalities, and compensation *provided* that the parties establish reasonable conditions and compensation consistent with the National Transportation Policy and do not unreasonably discriminate against a party or another forwarder. To ensure compliance with these conditions and policies, the contract must be filed with the Commission. In this situation, the contract, like a tariff, provides the ICC, shippers, and competitors with a means to determine the lawfulness of the transaction.

The proposed revisions to Section 10766 would allow freight forwarders to continue to contract with both common and contract motor carriers of property. These contracts, however, would no longer be required to be filed with the ICC. These undisclosed contracts would still govern the service and compensation. The ICC and public, however, would be unable to determine whether they are reasonable and nondiscriminatory.

Moreover, unless a motor common carrier has a tariff on file which embodies the terms of the undisclosed contract, this provision would conflict with the statutory requirements that all motor common carrier rates and services must be filed in tariff form with the ICC and subject to the agency's review. 49 U.S.C. §§ 10761 and 10762.

It is ATA's position that these contracts should still be filed with the ICC. Section 10766 should not be revised.

FREIGHT FORWARDER RATES

S. 1124 would eliminate the requirement that freight forwarder rates be filed with the ICC subject to the agency's regulatory review, and available to the public for inspection.

Freight forwarders compete directly with motor common carriers for less-than-truckload shipments. Motor common carriers must file their rates with the ICC and adhere to the other rate provisions designed to ensure nondiscriminatory, reasonable, and nondestructive rate practices. The elimination of freight forwarder rate regulation would place common carriers at a competitive disadvantage. They would be unable to ascertain the freight forwarder rates while freight forwarders would be able to review and then undercut the published motor common carrier rates.

It is the policy of ATA that in order to promote fair competition, all transportation rates should be filed with the ICC and be subject to the agency's regulatory review. The experience of the motor carrier industry in the last five years is ample proof that the minimal regulatory requirement allows for innovative pricing, a phenomenal increase in service and rate options, and does not impose an unreasonable burden on either carrier or shipper. The filing and review requirements provide order in the transportation system while providing an inexpensive and simple mechanism for preventing or correcting abuses should the need arise.

ATA requests that the language of the bill be clarified so as to make certain that a freight forwarder must continue to use a regulated motor carrier to provide the actual transportation of freight and that the rates of freight forwarders and carriers providing the transportation service must be published in tariff from and subject to the regulatory review of the ICC.

CARRIER LIABILITY

Additionally, S. 1124 would result in an inequitable distribution of liability for loss or damage of freight between freight forwarders and motor carriers. The bill would remove freight forwarders from the scope of the Carmack Amendment (49 U.S.C. § 11707) while the strict liability provisions of that section would continue to apply to motor common carriers performing the actual transportation service. As a result motor common carriers under the statute would be strictly liable to the shipper for any damage or loss to their cargo. They would be unfairly burdened with the liability and claims.

At a minimum, the proposed legislation must be amended to continue the application of the Carmack Amendment to all modes.

The strict liability provisions of the Carmack Amendment were enacted back in 1906, which was a time of strict economic regulation. They are not consonant with today's transportation trends or in keeping with the current international trend toward limited liability standards. ATA supports the enactment of a uniform base rate-excess value declaration liability system or similar system of limited-flexible liability standards, which would be uniform for all modes, or at least among competing modes. Any such liability system must be designed to serve at least the following purposes:

Provide loss and damage prevention incentives for both carrier and shipper
Allow U.S. industries to compete effectively in international markets
Utilize market place efficiencies
Make liability exposure predictable and stabilize insurance costs
Provide uniformity in liability levels in intermodal/multimodal movements
Provide fair and equitable treatment of all modes

We urge the Committee to consider updating the Carmack Amendment, a law adopted during a different economic era and not in keeping with today's transportation trends.

In contrast to ATA's request to modernize the liability standards, the Shippers' National Freight Claim Council, Inc. (SNFCC) has requested that this Committee use this legislative proposal to prohibit the use of deductibles as a pricing option to be offered by motor carriers. SNFCC has offered no new arguments in support of their position. Their arguments were rejected by the ICC prior to the enactment of the 1980 legislation; they have since been rejected by the United States Court of Appeals for the Second Circuit. *S.N.F.C.C., et al.* v. *ICC*, 712 F.2d 740 (2nd Cir. 1983), *cert. den.* 104 S. Ct. 3534 (1984). The Interstate Commerce Act has always allowed the use of deductibles by motor carriers as a form of released rates. Those shippers which have had this option available to them, and the reduced rates which accompany such liability limitations, appear satisfied. Carriers report that other shippers have requested similar arrangements. To our knowledge no individual shipper whose goods move subject to a tariff containing a deductible has complained of such rates to the ICC, the reason being that a shipper and carrier must agree to such deductibles before the tariff containing them can be applied to a shipment. The prohibition proposed by SNFCC is out of tune with the intent of this bill, the desire of shippers and carriers and would harm the shipping public.

FREIGHT FORWARDER OWNERSHIP OF COMMON CARRIERS

ATA policy supports the continuation of the statutory limitation on the ownership of common carriers by freight forwarders. The ICC has in recent months liberalized that restriction so as to allow freight forwarders to acquire and operate motor contract carriers. There has been no showing, however, that freight forwarders are in any way harmed by the proscription on the acquisition of a motor common carrier or that the public will somehow benefit by allowing a freight forwarder to acquire and operate a common carrier.

ADDITIONAL MATTERS

Some of the parties who testified before this Committee proposed amendments and revisions to this bill which would deregulate the transportation of refrigerated goods and/or brokers of transportation. We question the germaneness to this legislation and the propriety of such amendments being considered at this time. We would comment, at this time, only to the effect that the experience of our membership with transportation brokers is that there is a need for more, not less, regulation of such entities and that before this Committee should consider such a proposal, the public should be given adequate notice and that a full investigation as to the current operations and functions of transportation brokers, both regulated and unregulated, should be conducted. The abuses that arise as a result of questionable broker practices were recognized by the Congress in the Motor Carrier Act of 1980; that is why Section 10527 was enacted. The ICC was given authority to require written contracts of haul between brokers and carriers in the exempt field of transportation. The proposal to deregulate brokers entirely requires a much more detailed consideration by this Committee.

CONCLUSION

In closing, we wish to thank you for the opportunity to present the views of the trucking industry, and we look forward to working with the Committee as S. 1124 is considered further.

ASSOCIATION OF AMERICAN RAILROADS, *June 6, 1985.*

Hon. ROBERT PACKWOOD,
Chairman, Senate Subcommittee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing to express the support of the Association of American Railroads for S. 1124, the "Surface Freight Forwarder Deregulation Act." There is strong competition within the transportation industry and loosening the regulatory reins on the freight forwarding industry would be consistent with the actions the Congress has taken to lessen regulation of the railroads and motor carriers.

As you know, freight forwarding plays an integral role in railroad transportation. Freight forwarders consolidate traffic from various shippers for shipment by rail. Eliminating economic regulation of the freight forwarding industry will hopefully encourage innovative and more economically efficient freight forwarding practices and increase railroad traffic. We are confident that your bill will be beneficial to the freight forwarding industry, just as the Staggers Act has been an immense success for the railroad industry.

We would appreciate these comments being inserted in the record of the hearing you held on S. 1124. You may be assured of our continued strong support for your efforts to reduce regulation of the transportation industry.

Sincerely,

WILLIAM H. DEMPSEY, *President.*

CROWELL & MORING,
Washington, DC, June 7, 1985.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: Emery Worldwide (Emery) is the largest air freight forwarder in this country and has had substantial experience with the deregulation of that industry. Based on that experience, Emery supports the deregulation of surface freight forwarding as proposed in S. 1124. Emery believes that such deregulation will benefit both the forwarders and their shippers. The following comments on S. 1124 are offered.

In Emery's view, the deregulation of air freight forwarding has worked extremely well, both for the forwarders and the shipping public. As part of such deregulation, air freight forwarders no longer file tariffs. Their relationships with shippers are governed by common law principles of liability, and the terms and conditions of their contracts of carriage must meet common law standards to be enforceable. Certain of those common law principles applicable to common carriers are well established. A carrier may not totally excupate itself from liability for its own negligence. Any limitation on liability (such as dollar amount or periods for filing claims) must be reasonable and adequate notice thereof must be given. Also, it is usually considered necessary to offer higher limits of liability at increased charges for limitations on liability to be valid.

Emery understands that certain parties have urged that the provisions of the Carmack Amendment, 49 U.S.C. § 11707, and also the provision on filing overcharge claims, 49 U.S.C. § 11706, should continue to be applicable to surface freight forwards. In Emery's opinion, this is unnecessary. Emery believes that S. 1124 correctly removes surface freight forwarders from the applicability of the Carmack Amendment and other regulatory provisions which some parties seek to retain and that such continued regulation is unwarranted in view of the successful deregulation of air freight forwarders. Applicable common law principles will continue to provide adequate protection to shippers in the areas covered by 49 U.S.C. §§ 11706 and 11707.[1] Some of the same arguments raised against the provisions of S. 1124 were raised against air cargo deregulation and proved to be without foundation in fact after that deregulation took place.

We believe there is one point, however, which should be clarified to prevent any unintended subjection of air freight forwarders to ICC jurisdiction. Section 4(3) of S.

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[1] No source is given for the claims data of the air transportation industry set forth at page 2 of the testimony of The National Industrial Transportation League. Nor is any basis established for the claim that low limits of liability have been established resulting in substantial unrecovered losses. For example, Emery's limitation of liability is $10 per pound, not the $0.50 per pound claimed by the National Industrial Transportation League.

1124 would strike 49 U.S.C. § 10102 (9)(c), and thereby remove from the definition of a "freight forwarder" the requirement that a freight forwarder use transportation subject to ICC jurisdiction. With this deletion, air freight forwarders could fall within the amended definition of "freight forwarder" in 49 U.S.C. § 10102(9) because air freight forwarders meet the two remaining requirements of that section; namely, they (1) assemble and consolidate shipments and perform break-bulk and distribution operations, and (2) assume responsibility for the transportation from the place of receipt to the place of destination. In addition, Section 6(c)(1) of S. 1124 repeals 49 U.S.C. § 10561 which provides in sub-section 10561(b)(1) that the ICC does not have jurisdiction over freight forwarders using transportation of an air carrier.[2] The definitional change of "freight forwarder" and the repeal of the statutory provision which provides that the ICC does not have jurisdiction over air freight forwarders might in some contexts cause air freight forwarders to be subject to ICC jurisdiction, notwithstanding the lack of any such intent in S. 1124. Since some regulations of surface freight forwarders would continue under S. 1124, such as the ICC's right to require bonds/security which is continued by Section 8(d)(sic) of the bill, and since some parties are urging retention of other forms of regulation, care should be taken to exclude air freight forwarders from such regulation. Accordingly, Emery suggests that the definition of "freight forwarders" in 49 U.S.C. § 10102(9), as revised by S. 1124, be further revised by excluding "freight forwarders using transportation of an air carrier subject to Chapter 20 of this title" from the definition.

Thank you for the opportunity of presenting these comments.

Respectfully submitted,

R. BRUCE KEINER, Jr.,
Counsel for Emery Worldwide.

[2] 49 U.S.C. § 10526(a)(8)(B), which provides that the ICC does not have jurisdiction over transportation of property by motor vehicle if it is part of a continuous movement which has a prior or subsequent movement by air, would remain in force.

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